

# DUN'S REVIEW

NOV 15 1938



*XXII of a series of Century old cities- Detroit*

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#### THIS MONTH'S COVER: DETROIT

*When in 1836 William J. Bennett painted and engraved this aquatint from Frederick Grain's sketch, Detroit was an unimportant riverbank town of less than 10,000 inhabitants. It was not until the following year that Michigan was admitted to the Union. The view shown on the front cover looks to the northwest across the Detroit River from the Canadian shore. . . . This print appears through the courtesy of the Burton Historical Collection of the Detroit Public Library. . . . Detroit was founded by settlers and soldiers under Antoine de la Mothe Cadillac in 1701, remained a French settlement until 1760, and was then under British domination for some 30 years, coming under the American Flag in 1796. During that period it was chiefly a trading and military post. For a hundred years it grew steadily, but no more spectacularly than other fortunately placed Midwestern cities. Detroit, on its part, was favored by being separated from Windsor, Ontario, only by a narrow river, and it became one of the principal points for the exchange of goods between the United States and Canada. . . . With the development of the automobile the city that was to produce most of them began to expand rapidly. Its population doubled from 1910 to 1920 and in the next decade grew another 57 per cent, to 1,500,000. Detroit, aerial view above, is the fourth city in population in the United States.*

## OVER THE EDITOR'S DESK

TO HIS biographical sketches of the members of the Temporary National Economic Committee (DUN'S REVIEW, September, 1938), Edwin B. George this month adds his ruminations on some of the questions which confront that body (pages 22-28).

In the last two years Mr. George has made extensive studies—among them analyses of the Robinson-Patman Act, the Undistributed Profits Tax, and now the work and personnel of the TNEC. He has informed himself about his subjects with such thoroughness that frequent speaking engagements have followed. The more speeches he delivers the more train hops he makes and the more trips, the more interviews he gains with Pullman porters. And the more interviews, the more stories he has to tell, adding to the backlog of the famous, indeed notorious, George anecdotes.

This year the George speech-cycle is again gathering momentum. In recent weeks he has spoken on the problems confronting the TNEC before the American Trade Association Executives, in Pittsburgh, Pa.; the Drug, Chemical, and Allied Trades Section of the New York Board of Trade, at Skytop, Pa.; and the National Paint, Varnish, and Lacquer Association, at Atlantic City, N. J.

SOME time ago we set out in search of a comprehensive article on industrial research. We had no difficulty in finding the man who seemed pre-eminently fitted to write it—Maurice Holland, Director of the Division of Engineering and Industrial Research, National Research Council—but we found him reluctant to do the job.

As close to applied science as Mr. Holland is, he was disinclined to throw any bouquets, and he suspected that they were what we were looking for. Assured that we wanted him to write  
(Continued on page 49)

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# DUN'S REVIEW FOR NOVEMBER 1938



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Information about subscription rates is on page 49. . . . Second cover photograph by American Airlines, Inc. Frontispiece by Charles Phelps Cushing.



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EWING GALLOWAY

## TRADE ASSOCIATIONS AND THE LAW\*

HERMAN OLIPHANT

*General Counsel, United States Treasury Department, and  
Member of the Temporary National Economic Committee*

THE legal status of trade associations, such as the National Association of Hat Manufacturers, for example, and the legality of their activities are matters of current and general interest. There has been a recent and rapid multiplication of these associations of competitors, largely as a result of the problems of production presented by the war, and the problems of marketing following the war.<sup>1</sup>

These associations have been vigorously attacked as

*One of the subjects which the Temporary National Economic Committee is now preparing to review, trade association activities are here considered in terms of their legality under the Sherman Anti-Trust Act and the common law attitude toward restraint of trade. In Dr. Oliphant's opinion, the legal problems relating to trade associations go to the heart of our fundamental assumptions as to the proper relations of government to business.*

combinations in restraint of trade, violating the Sherman Anti-Trust Act in fixing prices and stifling competition.

They have been defended with equal zeal as devices for conducting business more intelligently without

suppressing any desirable forms of business competition.

Typically each of these trade associations is a voluntary association composed of independent business firms engaged in competition in the same industry or trade. Other

\* This article is reprinted through the courtesy of the Columbia Law Review, in which it was published in April, 1926 (26 Columbia Law Review, 381-395.) No changes have been made in the text itself, but footnotes have been added.

<sup>1</sup> Further development of trade associations was stimulated by section 3(a) of the National Industrial Recovery Act, (1933) 48 Stat. 196, 15 U.S.C.A., §703 (a), which provided that trade or industrial associations might formulate tentative codes and submit them for approval. All but a few of the codes were sponsored by at least one trade association. Trade association officials participated extensively in the administration of code plans.

The policy of the National Recovery Administration was to build up and strengthen trade associations throughout commerce and industry in order that they might perform code administrative functions. National Recovery Administration, (1934) *Bulletin No. 7*, p. 4. The influence of trade associations was a dominant factor in the National Recovery Administration. President's Committee of Industrial Analysis, (1937) *Final Review of the Effects of the Administration of Title I of the National Industrial Recovery Act*, pp. 78-84.

This report and also the Work Material Series of the Division of Review of the National Recovery Administration contain useful data on the subject of trade associations and trade practices.



kinds of trade organizations have grown up in large numbers. It will be useful to separate them from the type of trade association which is the subject of this discussion.

There are to be set to one side such organizations as chambers of commerce and manufacturers' associations whose membership is not limited to firms engaged in a single industry. Such organizations handle business problems common to dealers in shoes and dealers in automobiles in contrast to, for example, the National Wholesale Lumber Dealers' Association, which concerns itself primarily with business problems peculiar to one phase of the lumber industry.

Nor does the type of trade association here discussed cover the whole of a single industry ordinarily. On its way from raw materials to finished product, an article of commerce passes through ordered layers of independent and competing firms engaged in successive processes, perfecting the article and advancing it toward the ultimate consumer. Few trade associations embrace the firms in these numerous gradations. Rather they are composed of the firms of a single layer, which are, therefore, active competitors of one another as are the members of the National Association of Chewing Gum Manufacturers, for example.

Further, students of the subject do not look upon employers' associations or labor unions as trade associations. They are limited to the field of production and do not cover that of marketing or distribution as do trade associations. Again, trade associations are phenomena of the commodity market so that professional associations, such as bar associations, are to be excluded.

Again, a trade association, such as the National Association of Waste Material Dealers, does not itself engage in manufacture or trade. It is a loose aggregation of independent competing business units. Accordingly, we can exclude those combinations of business congregated by means of stock holding companies, for example, into new producing or marketing units, the individual businesses combined losing to a substantial degree their status as independent enterprises.

After all of these exclusions are made and excluding all local, State and sectional organizations, it has been estimated that there remain in the United States about a thousand of these trade associations having a national or interstate character.<sup>2</sup> No estimate of the number of individual firms which these thousand associations embrace in their membership is at hand, but they range in these numbers through all phases of American business from the National Association of Baby Vehicles Manufacturers to the Casket Manufacturers' Association of America. More-

over, these associations have an increasing importance in shaping the business policies of their members. In consequence, their legal status and the legality of their activities are matters of general practical interest. They are of theoretical interest also since they raise questions which search some of our most fundamental assumptions regarding the proper relation of government and industry.

BARE states of mind, such as an intention to violate the Sherman Anti-Trust Act, are without legal significance, and a trade association which, after its organization, did nothing would generate no real legal problems. The legality of trade associations reduces itself, therefore, to a question as to the legality of the activities which they are organized to carry on. These activities are numerous and varied in character. Some of them aim at the regulation and control of the members, a form of self government. Here fall efforts to develop codes of business ethics with such items as honesty in advertising and arrangements to settle disputes among members or with outside parties by commercial arbitration or otherwise. Common internal problems of business administrations are the subject of important activities. Such are the administration of labor relations including efforts at collective bargaining and the development of departments of employment management; such, too, are arrangements for co-operative insurance; the improvement of the product and of technical processes by industrial research; the interchange of patent rights; and the standardization of products and education of cost finding. Stimulation of demand by advertising has been a fruitful field for co-operation and so has the interchange of information as to the credit standing of customers. Common problems in relation to the railroads are handled by traffic bureaus maintained by trade associations. Representation of business interests before legislative bodies and commissions has formed an important part of the activities of these associations.

None of the activities so far mentioned are tainted with that particular form of illegality here considered, *viz.*, restraint of trade. Arrangements for the interchange of credit information sometimes have added to them an agreement that all members shall withhold credit from a customer in default on his account with any member. It is legal for a single creditor to refuse further to trust his debtor. It does not follow that collective refusal by a number of persons not themselves creditors is legal. Clearly such collective refusal does not violate the Sherman Act.<sup>3</sup> Whether it falls within more general categories of illegality constituting

<sup>2</sup> National Industrial Conference Board, (1925) *Trade Associations, Their Economic Significance and Legal Status*, p. 326. It was estimated that over 500 new trade associations were organized between June, 1933 and March, 1934. Chamber of Commerce of the United States, (1934) *Administration of Codes*, p. 5. There are approximately 2,400 trade

associations in the United States today. Department of Commerce, *Selected Trade Associations of the United States*, 1937 edition, page 2.

<sup>3</sup> With regard to the trade association credit bureau activities aimed at something more than credit protection, reference may be made to the later case of *United States v. First National Pictures, Inc.*, (1930) 282 U.S. 44.



some actionable and enjoined tort or an illegal conspiracy is a question which the courts have still to consider and answer. They may take the position that these creditors may resort to the courts to collect their debts as non-members of such associations must content themselves with doing, and that the power of an all embracing association by shutting off a debtor's supplies to deprive him of a judicial inquiry into the claim held against him is too potent of abuse to leave in private hands.

The activities of trade associations not yet mentioned are the ones aglow in the heat of current debate as to their legality under the Sherman Act. They all relate to price fixing or other forms of price manipulation directly, or indirectly by the curtailment of production when prices are low. These are the activities which have been attacked and defended on the score of their being illegal devices for restraining competition by replacing competitively made prices with prices artificially controlled. The two activities most questioned are: outright agreements to fix prices or limit production and the interchange of trade information. The others raise no novel consideration concerning their legality, and will require no discussion.

There is first the outright agreement to fix and abide by uniform purchase prices to the vendors of raw materials or uniform selling prices to the purchasers of the manufactured product, or again, the outright agreement to regulate prices by controlling the quantity of goods.

The Sherman Anti-Trust Act, codifying, and enacting for interstate commerce, the common law, makes illegal the general category, contracts and combinations in restraint of trade. While it does not mention contracts to fix prices or to limit production these two specific categories lie at the very center of the common-law concept of illegal conspiracies in restraint of trade and are therefore embodied along with other things in the Sherman Act by the expression contracts and combinations in restraint of trade. The illegality of contracts limiting production is based on, and measured by, their effect on prices so that attention may be narrowed to contracts to fix prices.

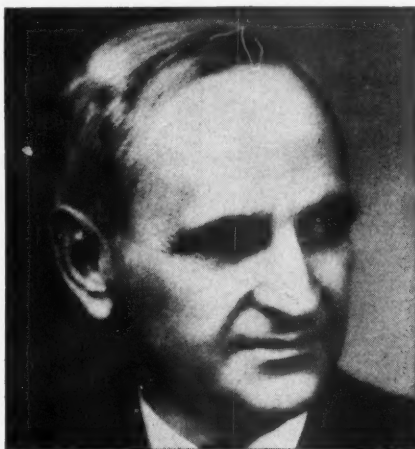
Since the end of the medieval era of the just price, courts

and legislatures have held a most pronounced attitude in opposition to contracts among competitors fixing prices. Competition must be left free in the middle zone of the competitive price. This price area in which competition can operate is, in general, bounded below by the bare cost of production in the plants having lowest costs, plus the minimum incentive in the form of profits necessary to induce their owners to continue to produce. Its upper limit is fixed by those of monopoly prices. By this is meant

roughly that maximum price for an article which, with no competition to fear, can be charged and yet produce that quantity of purchases which again, in view of the price, will yield the maximum of profits. Between these upper and nether limits competition can operate and an imposing body of case and statute law stands for the proposition that therein it must be left free to operate.

This judicial attitude has endured some centuries and it is not academic. Courts have sensed, and at times pointed out, the disadvantages of the free reign of competition in this middle zone. Its social costs have been counted in such things as the wastes of plants and men made idle by prices being driven by competition below the point where plants with high costs can operate. The only comfort which the law offers to the victim of deadly competition, so long as it is fair, is the small one of bankruptcy. It is a socially wasteful way of doing the thing, but are those wastes greater than

the social gains? With competition abroad, prices do ride substantially below the level of monopoly prices and the up and down swing of competitive prices is a signal for rushing more productive resources now into, and now out of, the production of a particular commodity. Competition is thus the operation of a part of our present social devices for apportioning productive energy. True, other devices could be employed to keep prices below the monopoly price level and to replace competition as a means of apportioning social energy among the various goods clamoring to be produced, but that brings us to the second aspect of the question which lies back of the judicial instinct in this matter, however seldom it may appear in the



ACME

PROFESSOR, COUNSELOR

*Born in Forest, Ind., in 1884, Herman Oliphant did his undergraduate work in his native State, at Indiana University and Marion College. At Marion he subsequently taught English for four years. Then at the age of 27 he pushed on to the University of Chicago, where after three years he won a Doctor of Jurisprudence degree. At that institution too he remained to teach, this time law. Meanwhile, during the War years, he served in Washington.*

*Dr. Oliphant continued his teaching of law at Columbia from 1921 to 1929, at Johns Hopkins from 1929 to March, 1933. Successively since the inception of the New Deal he has been general counsel to the Farm Credit Administration, the Secretary of the Treasury, and the Treasury Department, which he now represents on the Temporary National Economic Committee.*

opinions of courts. If not competition in this middle zone then what is the alternative? So far the mind of man has evolved for use today but one, *viz.*, regulation of prices and of production by rule of law. Price fixing in war time and control of production by a coal administration are an example of this, the only present alternative, in actual operation though under abnormal conditions. And this alternative is not fanciful. The *mores* of our people will not tolerate prices at monopoly levels for articles and services of substantial importance. The common-law regulation of the charges of the carrier and innkeeper and the marked current statutory extension of such regulation to all public utilities, to storage, to insurance, and, in fact, though we have not confessed it yet, to urban housing, are ample evidence that we will have regulation of prices of important things if not by competition then by statute.

It was against this background that courts all over this country promptly declared illegal those outright agreements among competitors to fix prices which sprang up in such large numbers during the last quarter of the nineteenth century and were attendant upon the industrial depressions of that period. The agreements of this period typically took the form of temporary pools or contracts for a limited period. The widespread organization of our present permanent trade associations was a later development.

COURTS have with equal zeal condemned those arrangements where there is no express agreement to fix prices but merely a tacit or implied one, and it has not been easy to deceive the courts in such cases. Frequent meetings of competitors, whether at formal dinners or in informal conferences, followed by significant changes in prices ostensibly made by each competitor acting independently are a sample of the sort of evidentiary facts which courts have not hesitated to use as a basis for inferring the legally operative fact, an agreement to fix prices. The legal consequences of murder do not attach to the fact that a man carrying a smoking pistol is seen emerging from a house in which another man is found dead. That is a mere evidentiary fact. The legal consequences of murder attach only to the ultimate or operative fact, *viz.*, the unlawful killing of a human being with malice aforethought. But the smoking pistol is an evidentiary fact, from which, along with other evidentiary facts, the legally operative fact may be inferred. Just so, frequent secret meetings of competitors do not violate the Sherman Act. They are mere evidentiary facts but, as such, along with other evidentiary material, they may justify an inference of the legally operative fact, *viz.*, an implied agreement to fix prices. A failure to make and apply this elementary distinction between evidentiary facts and operative facts is



EWING GALLOWAY

the cause of much of the adverse criticism of the first two of the four cases on trade associations which have reached the United States Supreme Court.

These first two cases were *Amer. Column & Lumber Co. v. U. S.*<sup>4</sup> and *U. S. v. Amer. Linseed Oil Co.*<sup>5</sup> The difference in the facts of these two cases is not so great as to be important for this discussion, so we may limit our examination to the latter. In the *Linseed Oil* case, the defendants claimed that their trade association was doing no more than collecting trade statistics and distributing them to the membership, that there was no express or implied agreement to fix prices. But it appeared that the twelve firms composing the association had signed identical contracts with the Armstrong Bureau of Related Industries binding them under penalty of a fine to report all past sales, to send in price lists and promptly to report any lowering of prices quoted. The Bureau agreed to relay all these facts to each member. The reports sent in by each member revealed the name of the member reporting, the identity of customers and of the sales or quotations being reported. The Bureau relayed to members not mere unidentified totals but all of this information. Sales made by members at prices varying from their reported prices had to be reported

<sup>4</sup> (1921) 257 U.S. 377, 42 Sup. Ct. 114.

<sup>5</sup> (1923) 262 U.S. 371, 43 Sup. Ct. 607.

by telegraph. If one member quoted a price to a customer and did not make the sale, he could find out what prices were quoted to this customer by other members. Monthly meetings at which attendance was compulsory were provided for.

After reciting the facts thus partly summarized the Supreme Court said (pp. 389-390):

"With intimate knowledge of the affairs of other producers and obligated as stated, but proclaiming themselves competitors, the subscribers went forth to deal with widely separated and unorganized customers necessarily ignorant of true conditions. Obviously they were not *bona fide* competitors; their claim in that regard is at war with common experience and hardly compatible with fair dealing."

Now that is a plain statement. The court merely held that, from the evidentiary facts before it, there was ample justification for the inference made in the court below of

the operative fact, *viz.*, an implied agreement to charge uniform prices. But this decision occasioned widespread criticism. We were told that the Supreme Court had put trade associations beyond the pale of the law and had made illegal all interchange of trade information. Of course, it held no such things. Indeed it did not hold illegal any one of the devices employed by the Linseed Association for the exchange of trade information. It merely held that they, in the matrix of the other facts of that case, were evidentiary facts sufficiently tending to establish a contract to fix prices to sustain the decision appealed from.

This is just where the law on this angle of the legality of trade associations now stands. Further the courts have not spoken.<sup>6</sup> Under this head there are then three practical questions which those managing and advising trade associations must face, and answer for themselves: Assuming no outright agreement to fix prices—what activities of such associations are to that degree evidentiary of a tacit

<sup>6</sup>In *Sugar Institute, Inc. v. United States*, (1936) 297 U.S. 553, Chief Justice Hughes made the same distinction. In connection with the Sugar Institute's practice of price reporting, he said: "Defendants' argument on this point is a forcible one, but we need not follow it through in detail. For the question, as we have seen, is not really with respect to the practice of making price announcements in advance of sales, but as to defendants' requirement of adherence to such announcements without the deviations which open and fair competition might require or justify. The Court below," Chief Justice Hughes continued, "did not condemn mere open price announcements in advance of sales. The Court was careful to say in its opinion that it found it 'unnecessary to pass upon the legality of the use of the Institute' for relaying such announcements, 'if each refiner entirely independently of the others voluntarily made his own

announcements without obligation to adhere thereto.'" (Pp. 585-586.)

He also said: "The restraints, found to be unreasonable, were the offspring of the basic agreement. The vice in that agreement was not in the mere open announcement of prices and terms in accordance with the custom of the trade. That practice which had grown out of the special character of the industry did not restrain competition. The trial court did not hold that practice to be illegal, and we see no reason for condemning it. The unreasonable restraints which defendants imposed lay not in advance announcements, but in the steps taken to secure adherence, without deviation, to prices and terms thus announced.

"It was that concerted undertaking which cut off opportunities for variation in the course of competition however fair and appropriate they might be."\*\*\* (P. 601.)

CUSHING





agreement to fix prices as will, first, cause the Attorney-General or the Federal Trade Commission to initiate adverse action, second, result in an injunction or a conviction in the trial court, and, third, result in an affirmance in the appellate court?

To say that the law stopping there is vague and uncertain and that business men do not know how to act is to expect of the law a degree of certainty which is beyond human ingenuity to attain, or a degree of paternalism contrary to the spirit of our law and a degree of inflexibility unfortunate for its administration.

BUT there is a second and, at present, a less certain phase of the law as to trade associations. This second question can be focussed thus: To ask whether there is present a contract to fix prices is to ask not one question but two: First, is there a *contract*? Second, is it *to fix prices*? Failure sharply to distinguish these as separate questions is the cause of much of the confusion in this area of law. The distinction is obvious enough when pointed out but it has not been made with the result that discussions by counsel and courts are often confusing and criticisms of the cases are frequently obscure and misconceived.

The first question, whether there is a contract, is the same whether it be a contract to fix prices or a contract to marry and it was this question only which, on the facts before it, was passed on by the Supreme Court in the *Lumber Co.* case and the *Linseed Oil* case. Evidence more circumstantial and less persuasive than that in the *Linseed Oil* case has resulted in many judgments for plaintiffs in breach of promise suits when the issue was contract or no contract.

The second question is more difficult. Granted a contract, was it a contract to fix prices? To see the nature of its difficulty compare the question, what is a contract to kill a man? A contract to pull the trigger of a gun now pointed at the head of a man with his back turned is, in terms, a contract to do, not the act of killing, but an act occupying an adjacent causal relation to the killing. Still we should call it a contract to kill the man. Death even in this case is not a necessary consequence of pulling the trigger. The gun may misfire or the man may move. Still the causal connection between the act of pulling the trigger and the act of killing is so close that in common speech we should call this trigger contract a contract to kill a man and, though not so called, its legal consequences would be the same as such. As you place the victim at a greater and greater distance or decrease the power of the gun or the skill of the marksman, death may cease to be highly probable and become merely probable, scarcely probable, merely possible, etc. All of these cases differ only in the degree of closeness of the causal relation.

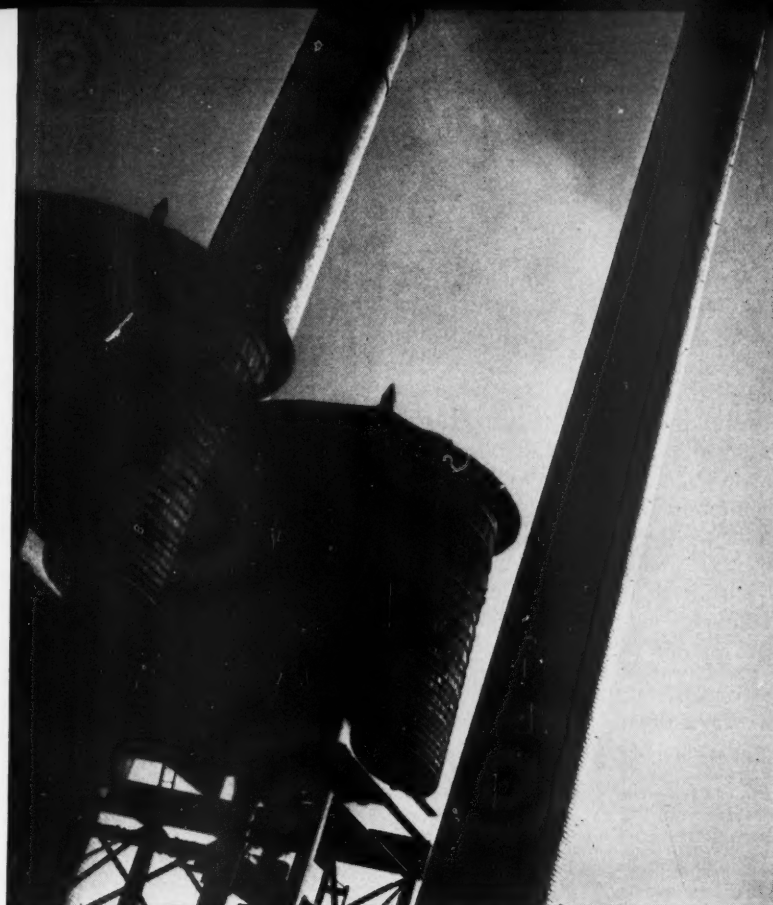
So a contract to fix prices is bad only because of the likelihood of its resulting in the artificial charging of uniform

prices which its performance causes. But there may be contracts to do other acts directly or indirectly producing the result. Which of these are legal? With time enough, we could start at one end with the very act of charging uniform prices and arrange a scale or gradation of other acts casually related to the first with intervening differences in degrees of remoteness. At one end we would have acts *necessarily* resulting in uniform pricing and at the other extreme acts *all but incapable* of causing uniform pricing. Where along that range shall the line be drawn so that we may say that a contract to do those acts lying on one side of this line, while not a contract to do the very act of fixing prices, nevertheless, has the same legal consequences as an out and out contract to fix prices, and that a contract to do those acts lying on the other side is wholly legal? This is the exact problem which confronts us and is not less simple and not less difficult than indicated.

We cannot say that a contract to do any act other than the immediate fixing of prices is legal. Contracts to do some adjacent acts are illegal for two reasons: Here, as so often in the law, the prohibition of a particular act to be effective must extend to adjacent acts likely to result in the prohibited act. Thus an agent is prohibited to do acts adverse to his principal's interest. His sale of the principal's property to himself may be, in and of itself, innocent but the likelihood of its being adverse to those interests causes it also to be prohibited. Indeed, the making of a contract to fix prices is itself one of these adjacent acts in a causal relation to the conduct sought to be prevented. The reason we do not want men to contract to charge uniform prices is because the contract will tend to cause them to make uniform prices; though not necessarily so, as they may break the contract. In the second place, the prohibition of the Sherman Law is broader than the term "contract to fix prices." It prohibits "contracts and combinations in restraint of trade." Adjacent acts would fall within that broader term even though we should refuse to apply the familiar principles which bring them within the term "contract to fix prices."

Conceivably the line might be drawn so as to include within that group of acts, which competitors may not contract to do, only those acts, which *necessarily* destroy competition in prices. At the other extreme we might so draw the line as to include acts which have *merely the possibility* of so doing. Again we might place this line in the middle range and make illegal contracts to do acts *the natural and probable consequence* of which is the regimentation of prices in an artificial manner, refusing to extend the category of illegality to contracts for acts not having that proximity of causal relation which we call natural and probable. A multitude of analogies throughout the law suggest this last as a feasible place at which to draw the line and the point at which the courts will probably place it when we have finished litigating the question.





ATLAS

It was this question which was involved in the last two of the four cases on trade associations which have been passed on by the Supreme Court of the United States. They are the cases of proceedings for dissolution brought by the United States against the Maple Flooring Manufacturers' Association<sup>7</sup> and against the Cement Manufacturers' Protection Association.<sup>8</sup> The court in the *Maple Flooring* and the *Cement* cases adopted, as the rule for deciding them, language from the *Lumber* case and the *Linseed* case. To quote from the *Maple Flooring* case (pp. 577-578):

"... As already indicated, the record is barren of evidence tending to establish that there is any agreement or purpose or intention on the part of defendants to produce any effect upon commerce other than, which would necessarily flow from the activities of the present Association, and in our view the Government must stand or fall upon its ability to bring the facts of the present case within the rule as laid down in *American Column Co. v. U. S.*, 257 U. S. 377, where it was said at p. 400.

"It has been repeatedly held by this Court that the pur-

pose of the statute is to maintain free competition in interstate commerce, and that any concerted action of men or corporations to cause, or which in fact *does cause, direct* and undue restraint of competition in such commerce falls within the condemnation of the Act and is unlawful;' and *within the rule laid down by the Court in United States v. American Linseed Oil Company*, 262 U. S. 371, at p. 390:

"In the absence of a purpose to monopolize or the compulsion that results from contract or agreement, the individual certainly may exercise great freedom; but *concerted action* through combination presents a wholly different problem and is *forbidden when the necessary tendency is to destroy* the kind of competition to which the public has long looked for protection.'" (Italics the writer's.)

Attention is called to those parts of the quotation put in italics because they require special study to ascertain what rule for our future guidance the Court lays down in this, its latest pronouncement on the subject.<sup>9</sup>

It will be seen that the Court in the *Linseed Oil* case had held that the acts therein involved had the *necessary* tendency to destroy competition and contracts for doing them were, therefore, illegal.

Everyone would agree that, if the causal relation is so close that price control is a *necessary* result of the act contracted to be done, the contract is illegal. So also one may safely assert that if a bodily injury is intentionally inflicted liability follows. But can we reason, that if the injury is not intentionally inflicted there is no liability? What about negligence? "Intentional" is valid in this case as an affirmative test of liability but not as a negative test. So in the *Linseed Oil* case "necessary consequence" was valid as an affirmative test of illegality. But was it valid as a *negative* test in the *Maple Flooring* case? In the italicized quotation, the court seems to assume that the direct and the obverse of this proposition are interchangeable. Is that true?

Suppose we made a careful examination of one of the devices used by the Maple Flooring Association, e.g., the compilation and distribution of a list showing the average

<sup>7</sup> (1925) 268 U. S. 563, 45 Sup. Ct. 578.

<sup>8</sup> (1925) 268 U. S. 588, 45 Sup. Ct. 586.

<sup>9</sup> In the *Sugar Institute* case the Court said the following with regard to the holding in the *Maple Flooring* case: "In that case, we decided that trade associations which openly and fairly gather and disseminate infor-

mation as to the cost of their product, the volume of production, the actual price which the product has brought in past transactions, stocks of merchandise on hand, approximate costs of transportation, without reaching or attempting to reach an agreement or concerted action with respect to prices or production or restraining competition, do not fall under the interdiction of the Act." (Pp. 598-599.)

cost among the members of a given product and a list of freight rates from a single point to all possible points of shipment to customers. Suppose we found that, in real life, manufacturers do not, as some seem to assume, make up their prices by taking their cost and adding a reasonable profit but that they watch their competitors and fix their prices as far above cost as they can and at, or below, cost if they must. Suppose we found that this list of so called average costs contained such flexible items as the members' own estimate of such varying and uncertain items as "value of plant" and "depreciation." There is not time further to examine this average cost device or any of the other devices present in the *Maple Flooring* case, but suppose we found that the average cost device along with the uniform freight book, or some other device, was such that, not the *necessary*, but the *natural and probable* consequence of its use would be a substantial elimination of competitive pricing. It is safe to predict that, when that situation is adequately presented to the Supreme Court (and it seems it was not in

the *Maple Flooring* and *Cement* cases as appears from the court's statements as to the deficiencies of the record in those cases) the court will promptly hold that a contract to put such a device in operation is an illegal contract, adopting as the *negative* test probability, not necessity.<sup>10</sup>

This prediction is made in the face of numerous statements by the court in the *Maple Flooring* and *Cement* cases which might be taken to make "necessary consequences," both the affirmative and the negative test of illegality. For example, the court says (p. 572):

"It cannot, we think, be questioned that data as to the average cost of flooring circulated among the members of the Association when combined with a calculated freight rate which is either exactly or approximately the freight rate from the point of shipment, plus an arbitrary percentage of profit, could be made the basis for fixing prices or for an agreement for price maintenance, which, if found to exist would, under the decisions of this Court, constitute a violation of the Sherman Act. But, as we have already

<sup>10</sup> The test applied in two of the more recent decisions of the Supreme Court seems closely to approximate that predicted.

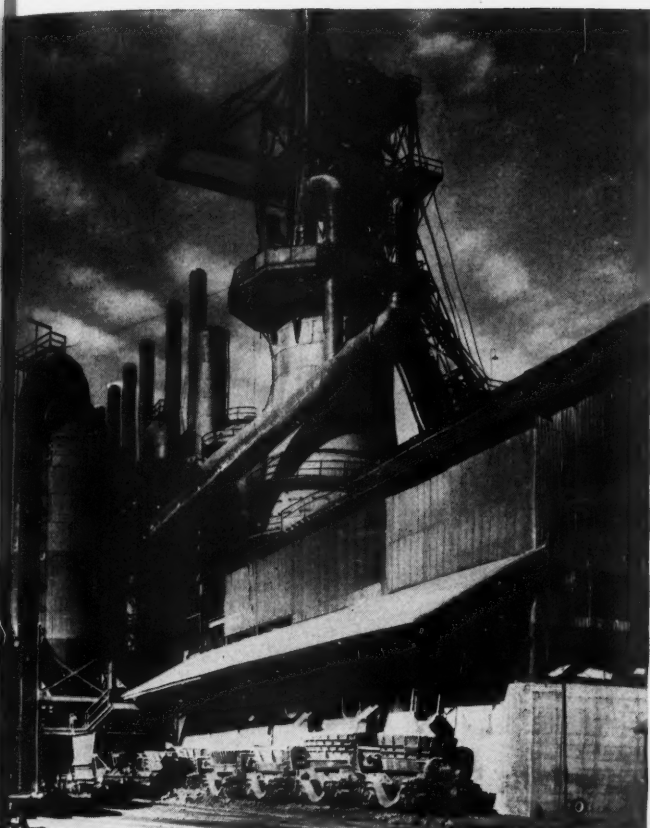
In *Appalachian Coals, Inc. v. United States*, (1933) 288 U.S. 344, the Court upheld a co-operative enterprise, the natural and probable effect of which, according to the Court, would not impair but would foster fair competitive opportunities. In its opinion the Court emphasized the finding of the lower court that the group was unable to fix prices in any market because of its economic weakness. It is noteworthy that the Court states that in the light of the "economic conditions peculiar to the coal industry," it had carefully examined "the probable consequences" of carrying out the co-operative selling plan, and had concluded that there was neither (a) "intent or power" to fix prices nor (b) the likelihood that "defendants' plan will have an injurious effect upon competition in these markets." The conclusion reached by the Court as to "the probable consequences" of the marketing plan may possibly be supported on the ground that it was

devised to aid the specially sick coal industry, at a time of general economic distress.

In *Sugar Institute, Inc. v. United States*, (1936) 297 U.S. 553, the Court again declined to deal with the abstract purposes or principles of the Sugar Institute though with a different result. The nature and probable economic effect on competition of the many trade practices attacked by the Government were the bases from which Judge Mack in the trial court approached the legal problem. The Court affirmed his decree with but a few modifications. The amendment to the decree which permitted future price reporting has been severely criticized. Fly, *Observations on the Anti-Trust Laws, Economic Theory and the Sugar Institute Decisions* (1936) 45 Yale L. J. 1339, 1358-1372. See also Handler, *The Sugar Institute Case and the status of the Anti-Trust Laws* (1936) 36 Col. L. Rev. 1, and Donovan, *The Effect of the Decision in the Sugar Institute Case upon Trade Association Activities* (1936) 84 Univ. of Pa. L. Rev. 929, 942.

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said, the record is barren of evidence that the published list of costs and the freight-rate book have been so used by the present Association. Consequently, the question which this Court must decide is whether the use of this material by members of the Association will *necessarily* have that effect so as to produce that unreasonable restraint of interstate commerce which is condemned by the Sherman Act." (Italics the writer's.)

And again it says (pp. 585-586):

"We realize that such information, gathered and disseminated among the members of a trade or business, may be the basis of agreement or concerted action to lessen production arbitrarily or to raise prices beyond the levels of production and price which would prevail if no such agreement or concerted action ensued and those engaged in commerce were left free to base individual initiative on full information of the essential elements of their business. Such concerted action constitutes a restraint of commerce and is illegal and may be enjoined, as may any other combination or activity *necessarily resulting in such concerted action* as was the subject of consideration in *American*

*Column & Lumber Co. v. United States*, *supra* and *United States v. American Linseed Oil Co.*, *supra*. But in the absence of proof of such agreement or concerted action having been actually reached or actually attempted, under the present plan of operation of defendants we can find no basis in the gathering and dissemination of such information by them or in their activities under their present organization for the inference that such concerted action *will necessarily result within the rule laid down in those cases.*" (Italics the writer's.)

While some of the language used by the Court in the *Maple Flooring* and *Cement* cases seems to indicate that it adopts necessary consequence as the negative as well as the affirmative test of liability, that may not be the fact at all. One cannot always get an accurate impression of an opinion as a whole by examining only brief and isolated extracts. Criticisms based upon such partial views often do not do justice to the court's position. It may very well be that, when the opinions in these two cases are further studied in their entirety, they may be found to disclose a purpose to do no more than to distinguish the cases before the courts from the *Linseed Oil* case by pointing out the absence of the necessary consequence found as a fact in that case and a purpose to point out the clear fallacy of the notion current in some quarters that any exchange of information looking toward a more informed administration of business violates the Sherman Act. If this be true, then in the zone between these extremes the Supreme Court is still uncommitted.

This angle of the matter the court did not discuss further. When it has occasion fully to examine the question, it will not render futile the prohibition of contracts to fix prices by limiting illegality to those acts whose necessary result is the elimination of competition in prices, thus making the prohibition capable of easy evasion.<sup>11</sup> Here as elsewhere men will be held to have intended, *i.e.*, to be responsible for, the natural and probable consequence of their acts. In questioning the formulation of the rule no assertion is made that the result reached by the court in these two cases is not sound even under a rule of "natural and probable." The facts needed to ground an opinion on the question are not at hand, nor does it seem that the court had such facts in view of its comment on the state of the records in these two cases.<sup>12</sup>

Would such a rule be too indefinite? It is the very standard of conduct found in many places in our law, and we do not hear complaints as to its lack of workability in these other branches of the law.

Certain arguments urged to justify a relaxation of the anti-trust law in its application to trade associations require attention because it seems that they are not well seasoned.

<sup>11</sup> It is difficult to suppose a case wherein the relation is one of necessity. A relation as close as the one in the contract to pull the trigger is not one.

To require that degree of proximity is, it seems, to exclude from illegality all adjacent acts.



Two of these arguments will be noticed in the closing.

All admit that some of our present major ills come from fluctuations in prices and that these evil consequences vary directly with the violence of such fluctuations. We do not always stop at this point to count the advantages counterbalancing these ills, but waiving that, prices will be somewhat stabilized if all buyers and sellers of a given article are informed as to trade conditions because they fix their prices to some degree with reference to those conditions.<sup>13</sup> This happens in the absence of any agreement among competitors to fix prices. So it is true as the court said in the *Maple Flooring* case (p. 582):

"It is not, we think, open to question that the dissemination of pertinent information concerning any trade or business tends to stabilize that trade or business and to produce uniformity of price and trade practice. Exchange of price quotations of market commodities tends to produce uniformity of prices in the markets of the world. Knowledge of the supplies of available merchandise tends to prevent over-production and to avoid the economic disturbances produced by business crises resulting from over-production.

"But the natural effect of the acquisition of wider and more scientific knowledge of business conditions, on the minds of the individuals engaged in commerce and its consequent effect in stabilizing production and price can

hardly be deemed a restraint of commerce or if so it cannot, we think, be said to be an unreasonable restraint, or in any respect unlawful."

"... Competition does not become less free merely because the conduct of commercial operations becomes more intelligent through the free distribution of knowledge of all the essential factors entering into the commercial transaction." (P. 583.)

But to state the matter in this unqualified form may well result in our grasping the shadow and missing the body of the truth lying back of the use made of some trade association devices.<sup>14</sup> For example, the information you act on in fixing a price at which you will offer one of your bonds for sale is not limited to that gathered and evaluated only by those anxious for prices to go up. Critics of the *Linseed Oil* case likened the operation of that trade association to organized exchanges dealing in commodities or securities for, it is said, such exchanges bring to light masses of information on trade conditions. But the information on which traders in organized exchanges predicate their action is a resultant of the clash of hostile gatherers of information. It has the same warranty of truth as is given to the results of litigation by its contentious character. There is no like guaranty of the accuracy of a list of average costs, for example, when compiled by the sellers only, with such flexible elements as "value of plant" and "depreciation"

<sup>13</sup> A study published in 1936 by the Institute of Economics of the Brookings Institution supports the view that generalizations concerning the relationship that an exchange of information among units of a particular industry bears to competition in that industry cannot be supported without a comprehensive and detailed study of all the factors affecting competition in the industry. Speaking of one system of making information available, the study states: "An open price system in an industry may give aid to the maintenance or establishment of price agreements, and it may provide the basis of more informed action by competing monopolists. It may, on the other hand, promote more effective competition and perhaps even weaken the restrictive forces which are present in an industry. An open price plan may, for example, reduce the importance of or destroy the power of buying monopolies such as those which are believed to arise when some large distributor, having for some time been the sole outlet for a producer, is in a position to press an unduly low price upon that producer. With prices generally known, such a producer would be in a better position to demand the going market rate. It might be expected that if the low price which he was receiving were generally known, other distributors would seek to purchase from him at something nearer the general market price. Similarly, a producer who was in a monopoly position might, if his prices were generally known, find his position weakened by the opportunities which others, knowing his prices, would find available in the industry concerned."\*\*\*

"The information necessary to determine the specific industries in which an open price system will operate to restrict competition and those in which it will operate to facilitate competition does not exist. The probability that open price systems will bring about restrictions of competition is, however, greatest where the other competitive factors in an industry are particularly conducive to such restriction. In general terms these factors are: (1) those which give a particular incentive to the making of price agreements; (2) those which tend to make possible the organization and maintenance of such agreements." Lyon and Abramson (1936) *The Economics of Open Price Systems*, pp. 74-75.

<sup>14</sup> After making intensive statistical studies, the Federal Trade Commission in 1929 said: "It should be noted that, although what the manufacturer most talks about is stability of prices, what he most wants is stability of profits, and what he finds it most practical to pay attention to is the margin of selling price over cost of production. Cost reports serve directly this end, and price reports also, though less directly."\*\*\*

"Stability of prices, even with due regard to the above-mentioned side

lights, is intrinsically desirable. But there is such a thing as undue stability. It is this that must be looked for when possible evils resulting from open-price activity are under critical examination. Such undue stability exists where prices are inelastic instead of adapting themselves to changing circumstances—a condition which results when the individual is either inert or restrained from seeking to expand his business where and when the opportunity offers to get additional business at a good profit, especially, for example, when raw materials have declined in price. This condition involves lack of efficient competition. It is, moreover, much more amenable to statistical study than uniformity of prices. The most obvious case of undue stability is, of course, an unchanging price level, regardless of changes in costs and in general business conditions."\*\*\*

"As regards stability of production, sales, shipments, etc., it is possible to compare open-price and other products on the basis of the trade-statistical data put out by the two classes of associations. If the open-price industries, other things being equal, can show greater stability of production than other lines of production, this is much to their credit. While stability of prices is a special interest of the association's members, stability of operation is an important public interest, since upon it depends regularity of employment and income and sustained purchasing power for all those occupied by the industry. But it does not appear that industries with open-price associations are better in respect to stability or regularity of operation than those that merely have trade statistics; indeed, the comparison, though on too narrow a basis, is more in favor of the latter." Federal Trade Commission, *Report on Open-Price Trade Associations* (1929) Sen. Doc. No. 226, 70th Cong., 2d Sess., pp. 356, 357, 358.

<sup>15</sup> Later economic studies have also cast doubt on the validity of any such generalization. See Lyon and Abramson, *op. cit.*, *supra*, note 11, pp. 79-80, where the authors state: "With regard to the influence of open-price plans on the stability of output, it may be said that where production is undertaken with a more complete knowledge of market conditions, there are likely to be fewer occasions for withdrawal from operation as the result of more complete understanding of the market. Hence there exists a probability of greater stability in production. Where, however, open-price systems lead to collective control and greater stability of prices, and where demand is in process of change, an even greater instability of production than otherwise will be likely to occur. The failure to reduce prices as demand falls will reduce rather than stabilize production. Stability of prices will, moreover, under such circumstances delay the translation of technical improvements into increased sales."





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in it.<sup>15</sup> Business conditions are not nicely quantitative as are mathematical values.

And further you would not be willing to rely solely on information compiled only by yourself and other sellers of the same bond unless you knew a further thing and that is that those other sellers would not, if you fixed a high price, rush out and undersell you. You could get that assurance by a contract to fix prices. Even that is not a perfect assurance. The contract may be broken by your competitors. May you not get this assurance also by an arrangement which lets you know that your competitors, who are equally anxious for a high price, have before them at the same moment the same figures which you have and which you have all compiled, those competitors knowing of your desire for the highest price possible?<sup>16</sup> May not an artificially produced uniformity in action as to price be not a necessary but a natural and probable consequence?<sup>17</sup>

The analogy of the organized exchange has been pressed in an argument broad enough to sustain not only unlimited exchange of trade information but also outright contracts to fix prices. It is said that on organized exchanges prices are scientifically fixed in the light of market conditions and all agree that to be both desirable and legal. The fallacy in this contention is that there is a wide difference between a meeting of sellers at which prices for scattered, unorganized and less well informed buyers are fixed, and the operation of an organized exchange whereon forces of buyers and sellers, always tending to equal one another in power, are pitted in open conflict against each other.<sup>18</sup> The court says in the *Linseed Oil* case (p. 390):

"The situation here questioned is wholly unlike an exchange where dealers assemble and buy and sell openly; and the ordinary practice of reporting statistics to collectors stops far short of the practice which defendants adopted."<sup>19</sup>

<sup>15</sup> The Federal Trade Commission after its investigation came to the conclusion and recommended that the compulsory powers of the Census Bureau should be broadened to cover the compilation and publication of trade statistics. "Government participation in trade statistics has in its favor the fact that it warrants unqualifiedly the making of statistics available generally, instead of accepting a situation that involves attempts to use them as a trade advantage for the sellers only." Edgar A. McCulloch, Chairman, Federal Trade Commission, *Letter of Submittal of Report on Open-Price Trade Associations* (1929) Sen. Doc. No. 226, 70th Cong., 2d Sess., p. xix.

<sup>16</sup> The president of the National Association of Sheet and Tin Plate Manufacturers at a meeting of the Association held September 10, 1925, states that sales and price reporting would obviate the necessity of frequent meetings. See, for a quotation of his words, Federal Trade Commission, *op. cit.*, *supra*, note 13, p. 266, note 1.

<sup>17</sup> This question has elsewhere been answered in the affirmative. See Consumers' Advisory Board, *Memorandum of Suggestions for Code Revision* (1934), I, Hearings before the Senate Committee on Finance, *Investigation of the National Recovery Administration*, 74th Cong., 1st Sess., pp. 849-939. See also, Federal Trade Commission, *op. cit.*, *supra*, note 13, pp. 251-275, *passim*.

<sup>18</sup> In the *Sugar Institute* case, the Supreme Court made it clear that the members of a trade association may disseminate information about competitive conditions but only if it is made available to all (such as buyers) who should have it. See also, Federal Trade Commission, *op. cit.*, *supra*, note 13, pp. 144-146, 154-156. This view of the Supreme Court in the *Sugar Institute* case reflects the attitude of the Court in stressing the probable consequences of the acts done, irrespective of the terms of the agreement. Compare the contract among the members of the *Sugar Institute* to a contract to pull the trigger of a gun pointed at the back of a man's head discussed on page 12 of the text.

<sup>19</sup> In *United States v. Trenton Potteries Co.*, (1927) 273 U.S. 392, 401, the Court said: "Respondents rely upon *Chicago Board of Trade v. United States*, *supra*, in which an agreement by members of the Chicago Board of Trade controlling prices during certain hours of the day in a special class of grain contracts and affecting only a small proportion of the commerce in question was upheld. The purpose and effect of the agreement there was to maintain for a part of each business day the price which had been that day determined by open competition on the floor of the Exchange. That decision, dealing as it did with a regulation of a board of trade, does not sanction a price agreement among competitors in an open market such as is presented here."

This analogy of the organized exchange, however false, suggests a matter which those interested in trade associations might well consider. Just as the contract to fix prices is a device to limit price changes to a minimum, so the organized exchange is a structure further to limit such changes than will the bare dissemination of information. It may be that the effect of the law on this subject, when it takes final form, will be to drive traders to organize exchanges in those trades where conditions permit and this result may not be undesirable. Would we not in the keen and informed competition of organized exchanges, when their practices are modified after enlightened and sympathetic study, retain the social utility of free competition and secure the benefits of all legitimate forms of price control?

With the organized exchange thus available as an alternative device for correlating changes in market conditions and in prices and for spreading peaks of prices into their depressions, courts are not driven to approve, as a device to minimize the evils of price fluctuations, contracts among competitors directly or indirectly to fix prices. They are, as price regulating devices, highly provocative of abuse. Moreover, they are wastefully inflexible and unresponsive to changes in business conditions. When the usual effects of such contracts are compared with the operation of organized exchanges the advantages are with the latter.

These legal problems relating to trade associations thus go to the heart of some of our most fundamental assumptions as to the proper relations of government to business.<sup>20</sup> Debate on these questions, like politics, makes some strange bedfellows. Back of some of the beliefs in favor of freeing these associations from some of the restraints of the Sherman Law, there seems to lie an unexpressed conviction of conservatism which holds that the less our government meddles in business the better. At the other pole and in agreement are those most anxious to see the end of the present capitalistic system. The latter feel that whatever developments hasten the era of wide governmental regulation of prices and production also hasten the day of government operation and finally the day when the whole economic system will be peaceably but completely reorganized. Even a person neutral as to the desirability of such reorganization may be interested in consider-

ing whether that hope is wholly fanciful. If we had not become accustomed to governmental regulation of the rates of public utilities, government ownership of them would not yet lie, as it now does, in the realm of serious debate. So it may be that those most anxious for a rigid maintenance of competition in order to avoid legislation fixing prices will prove to be the most conservative of the present order, when long time results are weighed. On such ponderous social questions as marked changes in the form of the whole industrial structure, society seldom formulates a conscious policy: it plunges into change by revolution or slowly drifts into change when it moves at all. If we could now plot the whole of the curve which is defined by the day to day decisions of our courts concerning competition and only a bit of which we can now see, we could probably predict developments infinitely more momentous than all of these thousand trade associations, which after all, are doubtless but a passing phase of our commercial evolution.

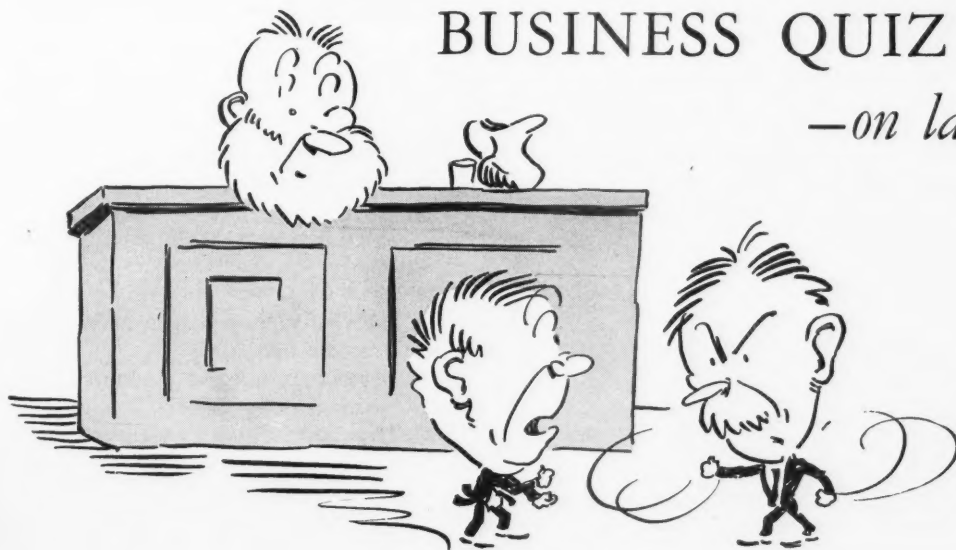
REPUBLIC STEEL CORPORATION



<sup>20</sup> Notable language addressed to such basic considerations is the following from Mr. Justice Stone, speaking for the Court in *United States v. Trenton Potteries Co.*, *supra*, note 19, at p. 398: "Moreover, in the absence of express legislation requiring it, we should hesitate to adopt a construction making the difference between legal and illegal conduct in the field of business relations depend upon so uncertain a test as whether prices are reasonable—a determination which can be satisfactorily made only after a complete survey of our economic organization and a choice between rival philosophies. . . ."

## BUSINESS QUIZ III

*—on law*



THE fact that there has been a hiatus in the quiz series from last March until now does not imply that the editors have lost interest. Indeed, work on this one began in July. But Number Three was to be on laws which aid, abet, or limit business, and legal questions, it turned out, were much like legal proceedings in the time required to argue them to an end. If there is to be another law quiz we shall allow ourselves more time—and fewer kibitzers.

This time there are 20 questions, counting 5 points each. No bonuses for completion, good spirit, or a perfect attendance record. We have few intelligent friends left who have not helped us with one question or another, so we have no fair test of an average score; par is probably about 65. Answers are on page 47. Readers who score 100 will be rewarded with a Certificate of Distinction if they offer the editors appropriate testimony, with witnesses.

1. If a negotiable note is not paid by the maker an endorser is liable to
  - ☐ A. Every prior endorser
  - ☐ B. Every subsequent endorser
  - ☐ C. All other endorsers, prior to subsequent
  - ☐ D. Be very annoyed with the payee
2. Corporations in bankruptcy or receivership are not subject to
  - ☐ A. Normal Federal income taxes
  - ☐ B. Excess profits taxes
  - ☐ C. Undistributed profits taxes
  - ☐ D. Taxes on distilled spirits
3. The longest protection possible under a copyright, including the one renewal permitted, is
  - ☐ A. 18 years
  - ☐ B. 28 years
  - ☐ C. 36 years
  - ☐ D. 56 years
4. The fourteenth amendment to the Constitution provides for
  - ☐ A. Prohibition
  - ☐ B. Federal income tax
  - ☐ C. Due process of law by States
  - ☐ D. Women's suffrage

5. The Sherman Anti-Trust Act as passed in 1890 prohibited

☐ A. Refusing to trust a customer  
☐ B. The collection of price statistics by private associations  
☐ C. Conspiracies to restrain trade with foreign nations  
☐ D. Importation of goods at less than selling price in the foreign country



6. The Bulk Sales Laws of the several States

☐ A. Establish standard practices for the sale of bulk groceries  
☐ B. Designate the maximum height, girth, and weight of sales people  
☐ C. Protect creditors against fraud by the sale of their goods in bulk by debtors  
☐ D. Forbids the holding of "Fire Sales" and "Closing Out Sales"

7. Property is said to be in escrow when

☐ A. It is held by some disinterested party until some condition is met  
☐ B. It is being used uncarefully  
☐ C. It is over-valued  
☐ D. It is behind in tax-payments

8. Suits involving infringement of a patent may be brought

☐ A. In the Court of Customs and Patent Appeals  
☐ B. In the District of Columbia Courts only  
☐ C. In several Federal District Courts simultaneously  
☐ D. In the U. S. Supreme Court

9. Under the 1938 Federal Revenue Act if a corporation has net income from operations of \$100,000 and a \$100,000 loss on sale of a building, the taxable income is

☐ A. Zero  
☐ B. \$2,000  
☐ C. \$98,000  
☐ D. \$100,000

10. Assignment is the process whereby

☐ A. One party transfers rights under a contract to a third party  
☐ B. Troops are directed to occupy a new sector  
☐ C. A contract is properly witnessed  
☐ D. Decision is made as to the proper court in which to bring suit

11. Under the Federal Fair Labor Standards Act of 1938, the payment generally required for overtime in the first year is

☐ A. Time and one-half beyond the regular hours  
☐ B. Time and one-half beyond 44 hours  
☐ C. Determined by collective bargaining  
☐ D. The price of a hamburger and coffee



12. The Federal Communications Act provides that if a broadcasting station permits a legally qualified candidate for public office to broadcast, it must afford equal broadcasting opportunities to

☐ A. The candidate's major opponent  
☐ B. The sponsor whose program was displaced  
☐ C. The candidate's wife or mother  
☐ D. All other candidates for the office



13. For tax purposes, the declared value of a corporation's capital stock is fixed
- ☐ A. By the corporation charter
  - ☐ B. By declaration of the corporation each year
  - ☐ C. By declaration of the corporation subject to change not oftener than three years
  - ☐ D. By the Bureau of Internal Revenue

14. Liquidated damages are amounts provided for in agreements which
- ☐ A. Make flood and water damage insurance compulsory
  - ☐ B. Define in advance the payments to be made for failure to perform
  - ☐ C. Provide for payments of damages on an installment basis
  - ☐ D. Protect against the issue of watered stock

15. The following is a Federal Corporation
- ☐ A. American Telephone and Telegraph Company
  - ☐ B. Federal Reserve Board
  - ☐ C. American National Red Cross
  - ☐ D. United States Rubber Company



16. Under the principle of contributory negligence, damages in case of accident can be collected from
- ☐ A. Any party who was in part responsible
  - ☐ B. No one, if the person injured was negligent
  - ☐ C. The person who was most negligent
  - ☐ D. The person least able to pay the damages

17. The legal Latinism *Nolo Contendere* means
- ☐ A. The Court feels that the defendant's contention is no good
  - ☐ B. I do not wish the contents of the shipments
  - ☐ C. Not guilty
  - ☐ D. I do not wish to defend myself



18. The Jones AAA Act of 1938 requires the Commodity Credit Corporation to make loans on wheat, cotton, or corn whenever
- ☐ A. The supply exceeds a normal year's domestic consumption
  - ☐ B. The supply exceeds a normal year's domestic consumption plus exports
  - ☐ C. The prices of these commodities fall below the average for 1909-1914
  - ☐ D. The Secretary of Agriculture deems necessary

19. "Real property" is a term which includes
- ☐ A. Furniture
  - ☐ B. Everything that has weight
  - ☐ C. Growing wheat
  - ☐ D. Growing trees

20. Before a proper application for registration of a distinctively novel trade mark can be filed in the Patent Office a trade mark must have been used on goods actually sold in interstate or foreign commerce, or in commerce with the Indian tribes
- ☐ A. For seventeen years
  - ☐ B. For two years
  - ☐ C. For six months
  - ☐ D. At some time

# CONUNDRUMS BEFORE THE NATIONAL ECONOMIC COMMITTEE

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**T**HIS is a country of extraordinary lights and shadows. When we see a land teeming with automobiles, radios, highways, facilities for amusement that are utilized on a gargantuan scale, and miscellaneous aids to good living of an abundance and cleverness which stagger the imagination, the thought is hard to down that here surely is the closest approach to mastery of economic ills which the world has yet achieved.

This canvas, however, is brutally slashed by the morbid type of man who makes research in skeleton closets his life work. He sees principally a tremendous percentage of our families living at sub-subsistence levels, the increasing violence of our cyclical swings with their sickening toll of unemployment and distress, the relatively low utilization of the capacity for great wealth which our genius has built but cannot discipline. The nation's economic stomach is no better adjusted to these wild plunges than is the human.

In the face of this contrasting evidence, few people will maintain that the only safe course is to sit tight and rejoice over selected statistics.

## Complexity

It is obvious that such incongruities will never be erased by gallant adherence to the dogmas under which they grew up. Endless detail lies beneath them all, and only in terms of their detail can they be handled. Possible methods of treatment are illustrated by the pros and cons of two sample issues—"price fixing" and "big business."

One of the main reasons for public concern is the increasingly heavy in-

dustrial unemployment characterizing successive business recessions. There is a strong tendency to assume that rigid prices and bigness are responsible. More pointedly, in some quarters these are looked upon as two words for the same thing, or at least as reciprocals.

Monopoly and relative monopoly (including not merely outright ownership but practical domination) are in themselves, according to this theory, the outstanding cause of rigid prices. Without them there could be no price agreements, no price "leadership," or general



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uniformity on the present scale. With prices kept rigid by artificial means the only free factors in periods of economic strain are production and employment. No threat can be more deadly. If you must have it, runs one passionate refrain, the dullest kind of guaranteed living would be preferable to the glories of which we are so fond of boasting in conventions.

Whatever our basic philosophies and vested interests, there is little right to convictions on these matters until we have at least plausible answers to such questions as these:

I. First, with respect to the problem of business size:

a. What is the actual extent and trend of concentration in the aggregate and by industries—as compared with the extent and purposes of *past* concentrations—as compared with the extent and purposes of concentrations which have arisen in other countries under other economic creeds?

### Bigness in Business

There does not seem to be too much point in arguing whether or not our corporations have grown big, or extremely influential in specialized fields even if small, and whether or not in industry after industry the policies of the few influence the many. Of course it is so. It was so 35 years ago when John Moody listed 300 combinations and cried out in anguish that a select few of even these were capable of controlling two-thirds of the manufacturing capital of the country. It is so now, as demonstrated by currently popular statistics, and it will be so 35 years hence. For the last half century, the iniquity of size has been one of the cornerstones of our national policy, and the achievement of size has been one of the cornerstones of our national pride.

Perhaps inherent in this contradiction is the fact that wherever there are human beings there are disparities. There must be some significance in the fact that you can find in other industrial lands as many counterparts as you

wish of our own periodic and excited exposures of monopoly—Great Britain, France, Germany, Holland, Belgium, and the Scandinavian countries, merely to start a long list. Naturally it is part of the picture that these governments assume responsibility to the ex-

tent that they grant freedom of action to their "trusts," and that may be one of the consequences we must face here. The point immediately involved has to do more with biology than with policy.

Purposes may be distinguished between old and new concentrations.



ATLAS



They may qualify our merely statistical conclusions. The old ones were plainly enough of the F. Opper cartoon types, aiming without much finesse to eliminate competition. Many of the new ones are for the purpose of serving great national markets with well-rounded lines. Is that efficiency or strangulation, and what are its other effects? These queries are intended to suggest not mere defenses, but areas of legitimate inquiry. Nothing in this effort at perspective denies the right of a people who are not getting along too well to ask questions.

### Tests of Value

b. Let us appraise the relative performance of large, middle-size and small concerns in terms of: price trends, quality improvement, treatment of labor, stability of operations and employment, their respective tendency to expand or decrease volume, and profits on tangible net worth and invested capital, and so on.

These are the tests of which business instinctively thinks and for which business has a right to demand the most serious consideration. The reasoning is as follows:

Even if industry has failed here and there to conform to artificial molds, has it produced the goods? Has it contributed its share to expanding American standards of living? Has it given the public its full money's worth? Has its treatment of labor been in keeping with its means? Can there not be positive as well as merely negative tests of industrial performance? The plea in a nutshell is that business should be measured by its tangible works as well as by technicalities. The score ought to count at least as much as the errors. The only question is whether it should be figured as a team or by individual players—whether each business or industry is to be judged according to its reasonable excuses, or whether the judges are to look merely at the trouble that too many good excuses can make.

c. What distinctions in efficiency can be recognized between large oper-

ating plants and large honeycomb corporations? It seems quite likely that business has often over-reached itself in trying to get big, and that in many industries it could operate more efficiently in smaller units. This is essentially a job of self-analysis.

d. To what extent are middle-size businesses, as compared with large ones, encroaching on the present domain of relatively small business, and what is the significance to the monopoly question of any such trend? Thoughts of this sort are prompted by such studies as those of Dr. Ralph Epstein (*Industrial Profits in the United States*, published in 1934 by the National Bureau of Economic Research) which showed a consistent *inverse* relation between size and earning power from the behemoths down to the \$250,000 net worth level. This suggests the possibility that the modern threat to small business may be coming as much from the submerged mass of middle-sized concerns as from those whose towering heads are so easy to hit.

e. Entirely aside from efficiency, how much justification is there for the three-phase social purpose sometimes emphasized in the campaign against size:

1. To keep the industrial field open to new and small enterprises.
2. To forestall the complete conversion of the country into a nation of employees living at the mercy of distant and impersonal employers.
3. Even if maximum operating efficiencies were found to reside in absolute concentration, what then would we do with people who still keep their chins up and their faith firm in the face of adversity because they were taught that America was a land of opportunity?

### Spirit of Inquiry

There is the obvious possibility of both affirmative and negative answers to questions of this sort, and it is merely absurd to assume that we already know their nature or their relative weights. We never will know them completely, but it might be widely agreed that many industries would do themselves a big favor by making a candid engineering and costing search for the true sources of efficiency and

inefficiency among their far-flung activities.

Simplification of corporate structures and intercorporate relationships are likewise illustrative of the goals that industry concedes in many instances to be reasonable. They also happen to be among the goals which industry could reach by its own efforts. Largely through inertia, perhaps, the voluntary steps are seldom taken; but when government takes them liberty is believed to be menaced. And maybe it is; much depends on attitudes and methods. But business executives are always jumping from one fad to another, just as naturally as they do in their private lives, and there is always plenty of old débris to be cleared up if only in the interests of sanitation. Beyond that, with respect to inter-industry co-ordination, quite possibly there is a job for business and government together.

### Rigidities

II. So much for random speculation on size. Second, what about price rigidities?

There may be an early style shift from hats to coal scuttles as protection against the current hail of statistics on flexible and inflexible prices. As in the case of size, the easy way out is to admit that most of it is so, namely: that the prices of some goods are very, very rigid and the prices of others entirely spineless.

It is clearly apparent that as the standard of living rises and goods become more distinctive and specialized, sellers (or buyers) will acquire an increasing degree of jurisdiction over prices which our philosophy never intended. To some approximate degree our system's capacity for automatic self-adjustment is certain to suffer. Self-adjustment is one of the theories in behalf of which the anti-trust laws seem to have outdone Horatius in holding bridges, even though long ago the enemy took to airplanes and tunnels. Such admissions as these, however, mean merely that if the old defenses

against public injury are obsolete, more modern ones should be devised. Surely the point in economic strategy has not been reached that requires us to lay waste our own country through the break-up of *productive* industries, in order to preserve the simple life for those who are saved. Mr. Roosevelt said as much in his message to Congress on this subject. As a matter of fact we probably *could not* make businesses small enough to satisfy the theory without paying some such price.

### Price Fixing

That a vast amount of price fixing, open or furtive, is complacently indulged in by many industries is almost self-evident from both trade knowledge and the public records. That a great deal of it is uneconomic is a strong presumption despite the fact that we are now to await the facts before having any opinion on anything. Whatever formula for the public good is finally discovered, it definitely will not be price control in proportion to power. It is not necessary to catch hold of gossamer theories to know that that means merely that all the rest of industry pays the profits of the select few. This much is industry's own fight, and not by any stretch of imagination the lining up of business against the reformers. The abundance of worry and doubt and disagreement surrounding the anti-trust question is not in this lurid center, but in areas which seem to stretch endlessly and vaguely away from it.

Naturally we will become curious over such questions as whether the present state of affairs differs radically from the middle and distant past, and why all these admitted price disparities exist.

### Arguments

In economic circles themselves can be found technical or positive exceptions to the current inferences from rigid prices. Arguments can be found that competition was never expected to insure low costs for particular articles over particular periods but only in the

long run (Stevens); that the prices of finished goods were comparatively rigid long before 1890 (Humphrey, drawing upon Frederick Mills); and that the most striking change of the last 90 years has been in the development not of rigid prices but of extremely flexible prices (Tucker).

them pile up, after which they are often apt to jump; that contrary to theory the first reduction may cause buyers to hold off rather than plunge; that prices are often sustained as long as possible out of consideration for dealers with heavy stocks; that the greatest selling point of some goods is an habitual price



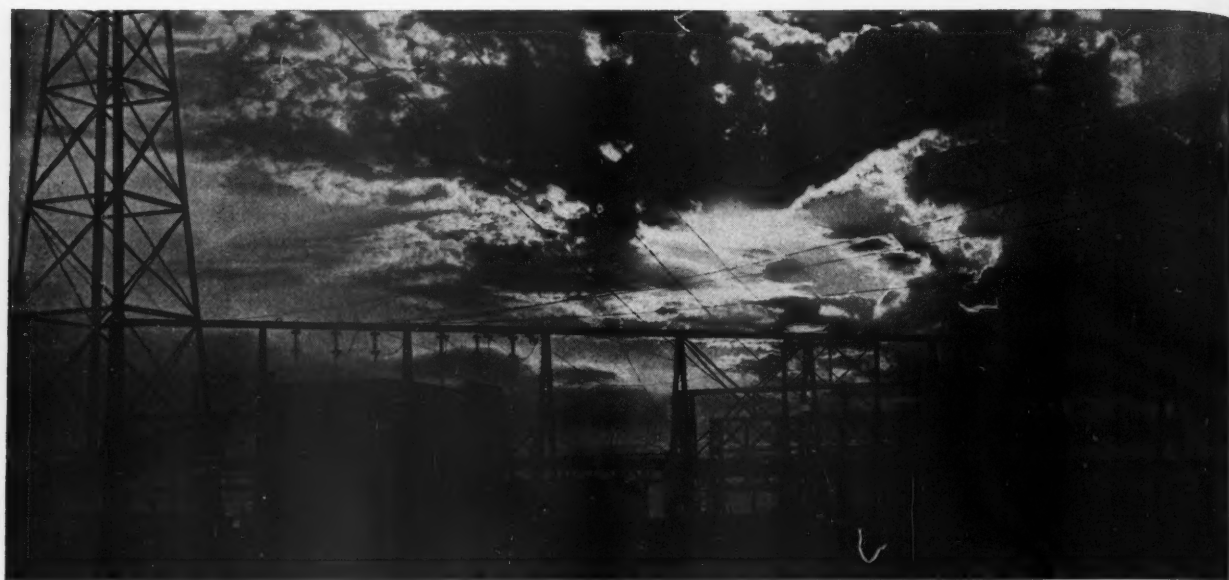
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Without benefit of economic counsel, industry itself argues resentfully and in some bewilderment that it has to keep its prices up for industrial products for the reason that demand dies so easily in hard times, and that only by getting as much as it can for whatever business there is can it stay alive. Extremists retort that too many of them stay alive anyway in such industries, and that that answer is the last link of evidence needed to prove that much of our supposed competition is a sham.

Industry points out that prices may become rigid because naturally they will not budge until pressures against

line and that almost everything else will be sacrificed first; that in the case of "joint" products, as in the building trades, a reduction in one item can have no other effect than loss to the man who tries to obey the theory. Nevertheless, it can be truthfully answered that all these circuit-breakers, however defensible in themselves, help to make depressions more profound. An so the battle goes.

What specific questions shall we now ask in an effort to give a proper weight to all of the conflicting and in themselves doubtless reliable fragments of evidence which we have available?



One illustration will illuminate the dimensions of the task.

Where now is the man who can tell you the extent to which each of the following facts are responsible for rigid or uniform prices:

- price leadership
- outright collusion
- open price systems, or known prices
- market mechanisms (basing points, delivered prices, etc.)
- price lining
- “joint” products
- small number of member concerns in affected industries
- large or small amount of invested capital
- high or low overhead and out of pocket costs
- market inflexibility for “sticky price” products—the kind of goods that nobody wants at any price when times go sour
- rigid labor costs
- taxes
- interest
- (what are the fixed elements of cost—as labor, in part—taxes, interest—and what is their social importance?)

It hardly needs to be argued that all of the foregoing circumstances can help

to make prices sticky. In terms of a solution, however, the only thing that is plain is that a national policy built upon fascination with any one of them has an excellent chance of being wrong. We know at any rate that locomotives will never be sold like wheat. They will never go down a couple of hundred dollars in price on a dull day when no orders are received. Nobody expects it including the critics of industrial prices. Then where is the dividing line between natural forces and executive manipulation and what should public policy be on each side of that blurry line? Just one law, applicable to all industries?

#### Some Considerations

This is not a good subject for outline treatment. The questions are too relentless, too interminable. Here are random considerations. Products often change in quality instead of in price. Some relatively firm prices have as their main purpose the protection of smaller competitors. If perfect price sensitivity should destroy the latter, what then would be the explanation of straight “monopoly busters” to the folks back home? Published prices are often merely fronts behind which ac-

tive price trading goes on—in favor of large buyers perhaps more than small.

Still another source of worry is concerned not with those industries which are too strong but those which are too weak and unstable. As contrasted with industries which illustrate relatively rigid prices, what should be the national policy toward industries that are basically demoralized? What are the tests of demoralization? Are the causes transient or evolutionary? A conclusion that some prices are too high might be regarded as equivalent to an assumption that there is such a thing as a “right” price and that therefore other prices can be too low for the purposes of economic balance in industry as well as in agriculture. In such cases, should co-operation among the members of an industry under Government supervision be encouraged by the Government and what type of administrative mechanism should be employed?

Of two closing thoughts on this topic of prices, one is another conundrum and the other is irrelevant.

The test question is: If big fellows were broken up wherever they were found, would prices actually soften or would some of the other characteristics



that have been mentioned, such as the nature of the product, or capital, or labor costs, or intensive specialization, emerge as the really controlling factors? In the latter event, what can be done to offset the sluggishness in business circulation which results?

The irrelevant thought has to do with the habit of judging price rigidity and unemployment on a moral basis. It is men who are responsible for them, and therefore the men are sinners. But to what extent is it men? The same man will, with some products and in some industries, be a price fixer or stabilizer and in others he will not. In many cases he may not have much to say about which he will be. He may be as much of a pawn of the circumstances as are the results.

Most of us make up our minds on questions of national policy through a choice of contradictory facts. The obvious aspects of our economic system are the best and the worst. The best in the form of the universal automobile, radio, motion picture house, and an interminable flow of gadgets. The worst in subnormal standards of living and wild business fluctuations. We build an incomparable brave new world for human habitation, but too many people too frequently find themselves without the means of entering it. Ridiculously enough these things are not contradictory but reciprocal, and they help make each other what they are.

The following sequence of ideas may at least suggest the situation with which the National Economic Committee and industry must jointly deal:

1. Deliberate price fixing and other private controls over competition, corresponding to power rather than economic need, are habitual with some trade and industries. The rest of industry pays the cost long before it filters through to the consumer. Its suppression, or subjection to Government supervision, is apt to be Point Number One on anybody's program. This is industry's own fight as well as that of the public.

2. In many respects, however, our present anti-trust laws are homilies on a way of life that can never be fully achieved, and to which differently situated industries respond in entirely different ways.

3. Were business to be merely atom-

ized it would be like cutting down our national creative power so that the machinery would be easier to repair.

4. Nevertheless the machinery does get out of order with increasingly serious damage to the standards of living dependent on it. The increasing violence of business cycles, increasing insecurity of employment, and low utilization of productive capacity stand out among the injuries inflicted.

5. Business will usually have its reasons for its actions, which is not to say that all the economic results of its actions are good. This conflict is a practical and not a moral one between accepted public and private interests. Its meaning is merely that correctives may have to be looked for along some other policy line than that of the anti-trust laws, and even that we may be obliged to take the risks of further experimentation with our economic system.

6. The country is engaged essentially in seeking a compromise between maximum production and personal freedom which will retain as much as possible of both.

7. There is not much chance of a sound solution unless business is willing to put the real facts on the table and the Government is willing to be realistic in dealing with them.

8. To be completely callous about it, there is not much point in industry refraining from putting out the real facts anyway because the Government already has most of the worst ones.



GENDREAU

Resistance to their display will merely make them all the more prominent, much as illumination is increased in proportion to the filament resistance that must be overcome.

9. The minds of some members of the Committee will be open and impressionable, those of others perhaps fairly well set. In either event there seems to be a good enough chance of "net" objectivity to warrant an up-to-date effort at self-analysis. It is bound to be healthy anyway whatever its relation to the inquiry. And it might be better, in the view of most of those who have started, to have an outsider do the job. It is as hard for an industry as for an individual to appraise itself, and there will naturally be less skepticism over the findings. Some industries have already begun to explore their own dark corners of erratic, random, and possibly wasteful operation.

Two possible tests of operation in the public interest have appeared. One might be termed practical, and is concerned with the specific direct services that have been rendered to consumers, capital, labor, management, suppliers, customers, and Government. The other is addressed to the industry's success or failure in "fitting" itself to the economic structure—its financial setup, price and production behavior, cyclical history, and the focal points of its competition.

10. For the first time in decades we might try to develop private, official,

and public understanding of the true workings of competition as a basis for national policies that will help us preserve the good and get rid of the bad in a system that is still the most productive on earth. Law will never be realistic until it is given realities to deal with. As matters now stand, most of the people who have occasion to deal with this tremendous subject do little more than strike attitudes when it is mentioned. Business men who are going happily about their affairs drop everything and assume a pose of injured innocence. Government stops governing and leaps into its familiar rôle of outraged virtue. Unless otherwise responsible and useful citizens quit playing charades the inquiry could leave the country worse off than when it started.

### Speculations

The basic situation at the moment is that the Government is looking over the national economy and suggesting that industries look over themselves. Out of all the foregoing speculations two in particular seem to stand out. One is protective and the other constructive.

One of the basic things industry can do is to use the last ounce of its power or influence to see to it that this investigation is long enough and thorough enough. The greatest danger of all lies in a brief and superficial inquiry. One certain outcome of that kind of

approach is a vindication of preconceived ideas. It is not hard for a man who believes that sheer size and wickedness in business were responsible for our troubles to collect proof satisfactory to him that it is so. The Government files are loaded to the guards with evidence of non-

conformance to standards that are supposed to be sacred. One of the leading figures in the inquiry has defined as his principal worry the possible inability of business to do justice to itself in its answers. For the answers are to be found in myriads of detail which mean hardly anything by themselves but which collectively go a long way to making human behavior what it is.

The other major point has to do with the national welfare rather than with personal defenses. No outcome from this inquiry can be good unless it is built on more facts and clarity than we have had so far, and it is not likely to be good unless business itself helps to shape it. Government cannot possibly acquire over night the sense of the practical that business has spent a lifetime in developing. But business happens to have applied itself principally to the details of management. For the most part it has had to look inward. The crisis of the moment happens to lie in the integration of all managements, and the same business genius that has performed miracles in broadening the horizon of American life can co-ordinate them. It is chiefly a matter of shifting the focus to new problems, of raising the sights rather than of dismissing experienced artillery officers. The task is harder, of course, for it is no longer one of adjusting finite things which can be seen and handled; but of adjusting masses of activity. It can not be accomplished without an unusual blend of practical and theoretical capacity in the national management, but with that blend the country ought to be able to level off at least a few of the bumps which are now spilling it so hard.

Perhaps this whole story is summed up in the statement that there is going to be an inquiry, that the Committee's attitude holds out more promise of useful results than could ordinarily be hoped for, that the most vital facts are the hardest to get, and that both for its own and the national good, business must supply a generous share of both facts and brains.



EWING GALLOWAY

# THE BUSINESS DIARY SEPTEMBER · 1938



*Hurricane takes heavy toll of lives and property in New England. . . Foreign currencies fluctuate wildly as Europe trembles on brink of holocaust. . . War seems averted by Munich accord as Germans prepare to assume control of Sudeten areas in Czechoslovakia at month end. . . War scare establishes new high in United States for gold imports. . . Tension relieved in United States by opening of pigskin season.*

- 1 PRESIDENT makes public report of Commission on Industrial Relations in Great Britain. Hitler bars Czech truce; makes counter demands.
- 2 MASS migration of city dwellers to country inaugurates Labor Day week-end. Pound sinks to three-year low.
- 4 MEXICO formally rejects United States demands for payment of seized lands.
- 5 UNITED STATES tennis team retains Davis cup.
- 8 WPA roll attains record peak of 3,066,963. Henleinists break off negotiations with Prague.
- 9 RAILROADS order 15 per cent wage cut October 1. Foreign capital in panic as Hitler tells Nazis that Germany will "capitulate to no one."
- 12 TYDINGS wins Senate renomination in Maryland primary. Hitler pledges aid for "self-determination" of Sudetens. Mistrial granted in Hines case.
- 14 SENATOR GEORGE renominated in Georgia primary.
- 15 CHAMBERLAIN and Hitler have three-hour conference at Berchtesgaden. Flow of gold to United States is unprecedented.
- 16 AUTOMOBILE union board votes compromise peace pact. Capt. Eyston sets world automobile speed record of 357.5 miles per hour.
- 19 BRITAIN and France agree to "recommend" surrender of Sudeten areas by Czechoslovakia.
- 20 ROOSEVELT holds parley with railroad and union heads. Czechoslovakia warned of German invasion unless Anglo-French plan receives "unconditional acceptance."
- 21 HURRICANE and heavy rain lash Atlantic Coast, wreaking severe havoc in Long Island and New England. Czechoslovakia capitulates to Anglo-French pressure. Spanish Loyalists announce withdrawal of foreign fighters.
- 22 DEATH toll mounts in wake of hurricane. Chandler Act becomes effective. Chamberlain again confers with Hitler.
- 23 CZECHS mobilize as Chamberlain sends new German terms to Prague.
- 24 REICH sets October 1 as final date for transfer of Sudeten lands. Roosevelt commission's report on Sweden made public.
- 25 COMMERCE Department sends questionnaires to 2,300 trade associations as part of current monopoly investigation.
- 26 EIGHTEEN utilities file brief with Supreme Court declaring TVA power illegal. Rail unions vote to strike October 1 unless Class I roads abandon threatened wage cut. Britain pledges joint aid with France and Soviet if Czechs are attacked; guarantees surrender of Sudeten area if war is averted.
- 27 PRESIDENT names fact-finding board of three to investigate railway strike situation, halting strike for 60 days. Pound and franc sink sharply as hope for peace wanes.
- 28 HITLER calls four-power conference in Munich. Crisis accompanied by wide swings in foreign markets unparalleled in five years. Pound and franc rally in spectacular recovery. Germany recalls all ships.
- 29 WAR averted as Chamberlain, Daladier, Mussolini and Hitler reach agreement. ICC disallows plan of three Western railroads to operate joint trucking system.
- 30 RAIL wage dispute emergency board opens hearings. Czechoslovakia accepts Munich terms "under protest." Britain and Germany make anti-war pact. Polish ultimatum delivered to Prague. Pound and franc continue to climb.





## THE TREND OF BUSINESS

PRODUCTION . . . PRICES . . . TRADE . . . FINANCE

The gains in industrial activity and in volume of trade which characterized July and August were continued into September and the first three weeks of October. War alarms and the hurricane left their marks, but did not halt the improvement. Huge amounts of gold rushed to the United States. After the Munich accord, those in financial markets found themselves able to breathe freely once more.

**B**USINESS relaxed and displayed greater confidence as the Four-Power agreement ended the nervous tension brought on by fears of war. Although the advance of domestic recovery had not been seriously interrupted by the European crisis, the assurance of a peaceful settlement of the problem was greeted with relief by

trade and industry in this country.

Foreign exchange rates were still rather unstable in early October, but the tremendous influx of foreign gold and capital to the United States had tapered off considerably. Security price recoveries on the New York Stock Exchange were immediately evidenced as the war clouds cleared, and the levels which had prevailed before the crisis were soon regained.

The domestic scene in the business panorama revealed a large number of public works projects, augmented as they were by the necessity of rebuilding and repairing storm-swept New England. Sensitive commodity prices manifested greater strength, and sales volumes rose in most trading markets.

The trend of industrial production continued upward during September, as the Federal Reserve Board's seasonally adjusted index rose to 90, compared with 88 in August, 83 in July, and an average of 77 in the second quarter of the year. Although the rate of advance has slackened somewhat, September's index was the highest since October, 1937.

Unfavorable external conditions influenced the production and distribution of consumer goods. It was pointed out that the New York City trucking strike caused high-style goods to miss the current selling season in some instances. The disruption resulting from hurricane and floods, as well as religious holidays, also contributed to a reduction in orders.

As a result, rayon yarn deliveries to mills declined somewhat in September,

### Industrial Production

Federal Reserve Board Adjusted Index  
1923-1925 = 100

	1935	1936	1937	1938
January	90	97	114	80
February	90	94	116	79
March	88	93	118	79
April	86	101	118	77
May	87	104	114	77
June	86	108	114	83
July	88	108	117	88
August	91	109	111	90
September	95	110	102	
October	96	114	88	
November	101	121	84	
December				

### Factory Payrolls

U.S.B.L.S. Index \*  
1923-1925 = 100

	1935	1936	1937	1938
January	67.5	76.7	94.4	75.0
February	72.6	76.6	99.7	76.9
March	74.3	80.3	105.5	77.1
April	74.4	82.3	109.3	74.6
May	71.7	83.9	109.7	72.9
June	69.9	84.1	107.0	70.8
July	69.1	83.4	104.6	70.6
August	74.0	87.1	108.2	76.9
September	76.7	86.9	104.4	
October	79.4	92.5	104.5	
November	78.6	94.0	92.9	
December	80.4	98.8	84.2	

\* Revised Series.

although the total was still considerably ahead of the monthly average for the first half of the year. Cotton textile mill activity failed to record the usual August to September gain, and output was moderately below last year. Silk deliveries continued to rise, from 38,504 bales in August to 38,844 bales in September.

Improvement in the heavy industries, following the general industrial trend, was more moderate in September and early October than in July and August. The demand for steel and for machine tools benefited from the increase in automobile production as assembly of 1939 models got under way. It was reported that automobile sales, though 9 per cent below August, were in excess of production, resulting in a depletion of dealers' stocks.

The steel industry was further benefited by a rise in the demand for structural steel and by an increase in the production of agricultural machinery. Steel ingot production increased 4.3 per cent in September over August, to 46.3

The construction industry maintained its position in the industrial spotlight. Building permits for 215 cities (DUN & BRADSTREET) issued during September showed a slight contra-seasonal increase over August, widening the gain over last year to 17.3 per cent. Due to the sharp increase in public works, engineering contracts for "heavy" building reached the highest figure for any September since 1929. Small home mortgages selected by the FHA for appraisal showed an increase of 117 per cent over September, 1937, while actual mortgage commitments rose 94 per cent.

A continued rise in the incomes of industrial workers was closely linked

tors of buying activity in primary markets—were up more than seasonally in September to a new peak for the year. Increases were registered in all classes of traffic except grain and grain products.

On the whole, there was little change during September in wholesale commodity prices. Cotton and cotton goods

## Industrial Stock Prices

Dow-Jones Index (Weekly Average)

Week	July 1938	Aug. 1938	Sept. 1938	Oct. 1938
I	134.28	142.72	139.47	135.92
II	136.72	140.36	140.99	147.18
III	136.77	139.35	135.00	150.97
IV	142.39	142.85	136.04	151.79
V	142.19			

## Wholesale Commodity Prices

U.S.B.L.S. Index—1926 = 100

Week	July 1938	Aug. 1938	Sept. 1938	Oct. 1938
I	77.9	78.4	77.8	78.0
II	78.3	77.9	77.9	
III	78.9	77.4	78.3	
IV	78.7	77.8	78.4	
V	78.6			

declined somewhat in price, while rubber and non-ferrous metals showed slight increases. The trend, if anything was slightly upward. During the first week of October, rubber, hides, and copper were unusually strong.

The course of security prices made a striking picture of the effects of the "war scare" on financial markets. They plunged downward in response to unfavorable European developments, and then rallied even more quickly as the war clouds cleared. The net result was that the New York Stock Exchange's valuation of its listed stocks at the end of September was almost exactly the same as at the end of August. Bond prices, similarly, ended the month with very little loss.

The volume of corporate financing was somewhat smaller in September than in the preceding months, some issues being postponed because of the uncertain foreign situation. The same circumstances accounted for the fact that in the week ended September 30, gold to the value of \$204,844,905—the largest amount for any week on record—came into the United States.

The Federal Reserve Board reported an increase in the deposits of member banks in leading cities during September. Some banks registered the largest total deposits in their history.

## Department Store Sales

Federal Reserve Board Adjusted Index  
1923-1925 = 100

	1935	1936	1937	1938
January	76	81	93	90
February	77	83	95	88
March	79	84	98	85
April	75	84	93	83
May	74	87	93	78
June	79	87	93	82
July	80	91	94	85
August	77	86	92	
September	81	88	94	86*
October	78	90	93	
November	82	94	91	
December	83	92	89	

\* Preliminary.

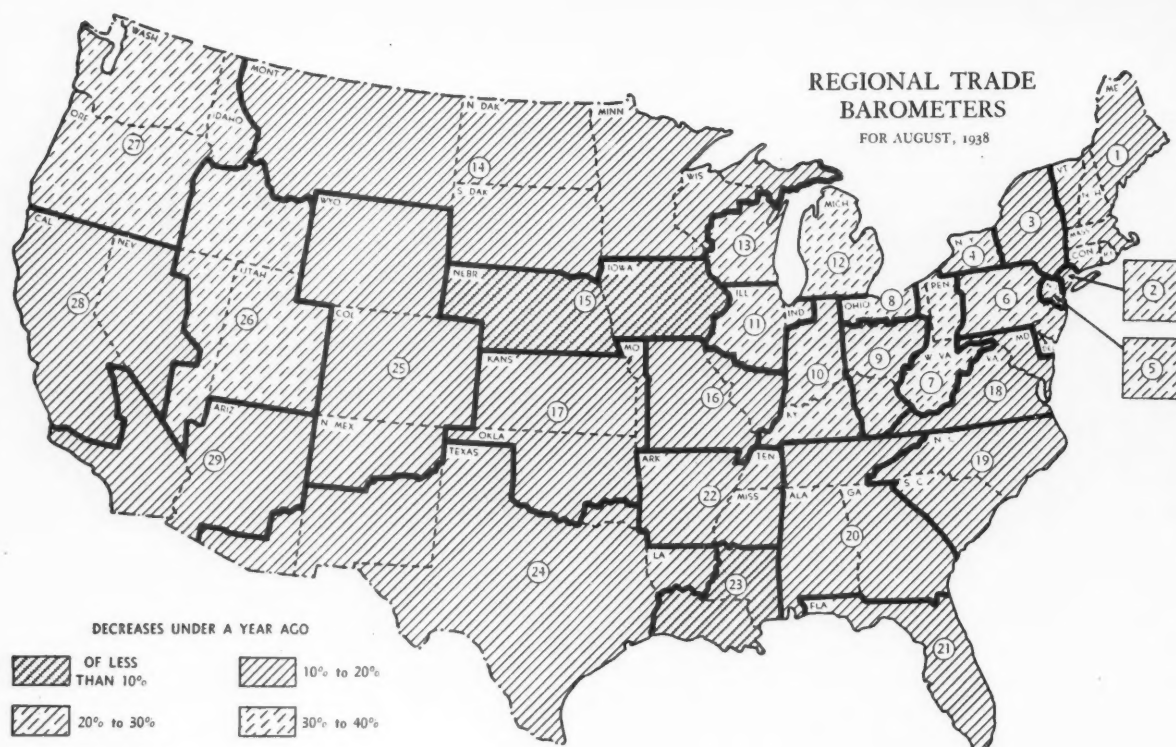
per cent of capacity. Orders were estimated 15 to 20 per cent higher in the month. Pig iron production rose 16.2 per cent, making the September daily average rate the highest since November, 1937.

The index of machine tool orders declined slightly in September, but a substantial gain was registered for the third quarter of the year in comparison with the second. Sash and door production exceeded the volume of a year ago for the first time this year, rising to a level 4 per cent ahead of August and 10 per cent above September, 1937.

with the general expansion in industry. The BLS index of factory payrolls (preliminary, revised series) advanced to 80.7 in September from 76.9 in August. The decline from 1937 in farm income, due primarily to low agricultural prices, was estimated at about 14 per cent for the first eight months of 1938. Government price-bolstering loans to farmers increased; the parity price for corn was reported at 81 cents a bushel, and the farm price at 48.

Department store sales continued to reflect the general uptrend in business activity, as the Federal Reserve Board's seasonally adjusted index increased from 83 in August to 86 in September. Sales for the month were 9 per cent below the 1937 volume. Wholesalers reported a tight situation in dry goods markets. A belated rush of orders for sheets, pillowcases, and other textile lines accompanied the flood damage to New England mills.

Carloadings—often used as indica-



## TRADE CONTINUES UPWARD TREND

*The United States Trade Barometer rose to 78.7 (preliminary) in September from 75.8 in August. Barometer figures are compiled by Dr. L. D. H. Weld, Director of Research, McCann-Erickson, Inc.; trade information is reported by 157 district offices of DUN & BRADSTREET, INC.*

AGAIN the United States Trade Barometer moved forward, as the September index showed a gain of 2.9 points or 3.8 per cent over the August figure. The index has been moving upward since July, but the September increase is the largest recorded this year. Due partly to the increase this year and partly to the decline in the fourth quarter last year, the decrease from the year-ago figure was narrowed from 21.3 per cent in August to 16.1 per cent in September.

It is interesting to note that the degree of activity indicated by the preliminary September figure was approximately equal to that which prevailed as trade was falling off in January 1932, as trade was improving in April 1935, and, again, as trade was declining in March of this year.

According to DUN & BRADSTREET's district office reports for September, retail trade benefited considerably from the general betterment shown in industry and business as a whole. The combination of expanding payrolls and brisk

shopping weather resulted in better business for both wholesalers and retailers—particularly for those in the apparel divisions. The back-to-school trek of vacationing students and teachers was also a contributing factor.

Extension of trade from August to September followed a somewhat more moderate improvement in July and August. According to the latest available regional barometers, fifteen regions registered increases in their August indexes over July. The largest gain was made in the Florida area, where an 11 per cent rise occurred. New Orleans was next in line with a 9 per cent increase, Pittsburgh was third with a 7 per cent gain, and Buffalo and Rochester's 6 per cent rise was fourth. More of the regions reported decreases than had done so from June to July. Los Angeles trade dropped off about 7 per cent, St. Louis 6 per cent, and Iowa and Nebraska, after a spectacular gain from June to July, 8 per cent. Gains, on the whole, were



of smaller proportions than in the previous month, whereas losses were somewhat greater and more numerous.

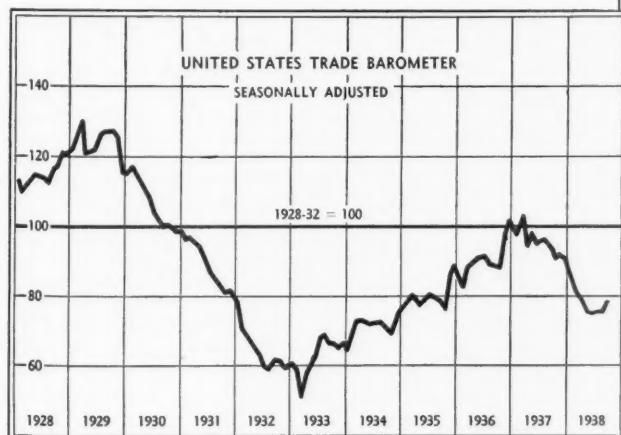
When compared with last year's August volume, trade declined most sharply in the Detroit area, where the drop was 39.4 per cent. New Orleans was once more in the most favorable comparative position, with a dip from August 1937 of only 5.7 per cent.

July-to-August changes in the trade picture, from a geographical point of view, followed an interesting pattern. In general, increases were apparent in the South and the Northwest, while a belt through the middle of the country from New England to California registered decreases. In comparison with last year, the Middle West and the South were in better comparative positions than the Northeast and the Far West. Fourteen of the twenty-nine regions reported trade declines of 10 to 20 per cent. The same two regions—New Orleans, and Iowa and Nebraska—continued to be closest to the 1937 level, with decreases of less than 10 per cent in both areas.

THE MAP AND TABLE compare the August, 1938, indexes with those for the same month a year ago. In the column at the extreme right of the table there is indicated the relative importance of the regions: the figures are percentages of national retail trade from the 1935 Census of Business.

THE INDEXES for the regions (charted, with U. S., from 1928, on pages 34-37; figures for September, 1937, through August, 1938, on page 34) are composites based on: bank debits (Federal Reserve Board), department store sales (Federal Reserve Board), new car registrations (R. L. Polk & Company), and life insurance sales (Life Insurance Sales Research Bureau). In regions 2, 3, 4, 5, and 14, wholesale sales (Department of Commerce), and in region 2, advertising linage (*Editor and Publisher*), which were found to make those indexes more accurate, are included. In region 15, department store sales have been omitted. Each index is separately adjusted for seasonal variation and for the number of business days in each month. All are comparable. The monthly average for the five years 1928-1932 equals 100. The preliminary figure for the United States (the last month charted below) is computed one month before the regional figures are available.

THE PARAGRAPHS printed opposite the 29 regional charts quote figures for August based on samples of department and retail stores reporting to the Federal Reserve banks; for September and for the first half of October based on opinions and comments of business men in various lines of trade, gathered and weighed by the local DUN & BRADSTREET offices in making up their estimates.



## REGIONAL TRADE BAROMETERS

REGION	August 1938 Regional Index	August 1938 Compared with August 1937 (%)	Retail 1935 Sales %
U. S.	75.8	-21.3	100.0
1. NEW ENGLAND	65.2	-18.5	7.8
2. NEW YORK CITY	67.9	-21.2	10.3
3. ALBANY AND SYRACUSE	77.2	-19.8	2.6
4. BUFFALO AND ROCHESTER	69.7	-22.1	1.9
5. NORTHERN NEW JERSEY	71.4	-21.5	2.9
6. PHILADELPHIA	69.0	-26.0	6.2
7. PITTSBURGH	71.4	-31.5	3.7
8. CLEVELAND	71.1	-32.8	2.9
9. CINCINNATI AND COLUMBUS	79.9	-28.1	3.1
10. INDIANAPOLIS AND LOUISVILLE	89.8	-20.5	2.6
11. CHICAGO	74.0	-22.9	6.4
12. DETROIT	66.0	-39.4	4.0
13. MILWAUKEE	76.5	-23.9	2.2
14. MINNEAPOLIS AND ST. PAUL	86.5	-12.5	4.5
15. IOWA AND NEBRASKA	77.5	- 8.9	3.0
16. ST. LOUIS	77.2	-15.0	2.5
17. KANSAS CITY	82.6	-19.5	3.6
18. MARYLAND AND VIRGINIA	89.7	-15.0	3.8
19. NORTH AND SOUTH CAROLINA	95.8	-11.1	2.1
20. ATLANTA AND BIRMINGHAM	96.1	-14.3	3.5
21. FLORIDA	105.9	-12.0	1.3
22. MEMPHIS	80.9	-16.5	1.5
23. NEW ORLEANS	100.1	- 5.7	1.0
24. TEXAS	103.9	-13.1	4.5
25. DENVER	92.0	-17.4	1.3
26. SALT LAKE CITY	84.2	-20.9	.8
27. PORTLAND AND SEATTLE	78.2	-21.5	2.7
28. SAN FRANCISCO	83.7	-17.9	3.4
29. LOS ANGELES	83.8	-16.9	3.9

# REGIONAL TRADE BAROMETERS - - - - - REGIONS 1-5

REGION	U. S.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1937															
September	93.8	81.4	84.2	95.2	85.7	87.6	88.3	99.7	104.0	110.1	109.3	91.9	110.3	100.8	100.3
October	90.6	77.3	78.9	92.1	83.2	83.2	83.3	92.8	101.2	108.0	105.1	87.8	107.1	100.1	99.0
November	92.3	80.8	78.7	92.9	82.6	82.7	86.5	90.5	87.6	98.4	103.1	90.3	92.0	98.9	98.7
December	91.2	78.7	79.5	89.8	81.5	81.2	85.3	93.5	85.3	95.3	100.7	92.3	85.9	98.2	93.0
1938															
January	84.8	76.0	73.5	85.9	78.0	75.3	76.1	80.7	80.9	90.8	92.9	89.1	76.9	93.3	93.8
February	80.2	74.0	71.0	83.2	74.5	74.9	72.6	78.0	78.0	88.6	87.7	81.8	72.7	88.4	89.2
March	79.4	79.3	66.4	78.5	70.7	72.5	70.2	75.9	73.6	81.5	85.1	83.8	67.8	91.0	87.5
April	76.7	70.4	67.6	78.9	68.4	69.4	70.2	74.3	75.1	82.5	80.0	75.3	63.4	85.6	91.5
May	74.9	66.5	65.1	77.5	67.4	68.4	70.8	69.0	74.0	80.0	81.4	75.3	61.1	77.5	85.2
June	74.8	67.8	64.5	73.2	64.1	63.2	70.4	67.3	71.6	79.1	80.5	77.1	63.0	76.9	80.4
July	75.1	66.7	65.9	78.4	67.0	67.3	69.5	66.9	71.9	81.3	88.4	74.4	60.4	76.5	86.0
August	75.8	65.2	67.9	77.2	69.7	71.4	69.0	71.4	71.1	79.9	89.8	74.0	66.0	76.5	86.5
1937															
September	88.4	90.3	97.1	108.1	110.5	109.6	114.7	98.3	104.4	115.0	108.3	100.4	96.1	95.1	94.1
October	78.5	97.2	92.7	102.8	100.4	101.5	118.8	94.3	95.4	106.9	110.1	99.8	91.6	93.8	95.6
November	76.4	90.3	92.5	105.2	95.9	101.6	112.1	86.9	95.5	110.0	107.7	97.3	90.3	100.6	99.4
December	81.4	90.0	98.4	105.0	103.6	109.5	110.3	94.3	105.0	114.7	105.0	98.6	87.6	97.0	94.2
1938															
January	86.9	90.8	95.7	95.6	99.1	99.6	99.5	89.1	92.7	115.8	97.5	89.2	83.7	88.3	87.4
February	76.1	80.9	87.3	93.2	92.9	102.5	100.5	85.8	94.2	110.5	95.9	88.9	80.6	82.0	84.0
March	70.6	77.0	85.3	89.5	90.2	97.1	100.6	80.9	95.3	103.1	96.6	81.2	76.0	77.4	76.6
April	71.4	76.9	81.9	95.5	85.8	93.0	94.2	81.7	87.6	100.3	92.6	84.4	78.0	82.0	82.4
May	67.4	79.0	82.7	88.9	91.8	93.1	102.5	80.4	90.9	99.9	91.9	86.6	75.2	84.0	79.8
June	71.2	74.4	84.3	90.6	92.1	91.8	103.0	77.7	88.4	99.5	87.5	80.9	76.4	81.8	81.9
July	84.6	82.1	83.4	91.3	91.0	94.3	95.4	78.7	92.2	103.0	96.8	81.1	74.5	86.2	89.7
August	77.5	77.2	82.6	89.7	95.8	96.1	105.9	80.9	100.1	103.9	92.0	84.2	78.2	83.7	83.8

## 1. NEW ENGLAND

AUG., 65.2 JULY, 66.7 AUG. 1937, 80.0  
 AUGUST—Percentage department store sales changes from previous August: Boston +5, Providence -6, New Haven -8. SEPTEMBER—Percentage retail trade decreases from previous September: Bangor-New Bedford 5, Portland 8, Boston-Springfield 15, Worcester 20, Hartford 10, New Haven 12. Wholesale trade decreases: Portland 5, Boston 10, Springfield 15. Hurricane and floods in last part of month interrupted all business; damaged farm lands, roads, bridges, and forests. Production and payrolls generally below last year; operations being gradually resumed since storms. Collections slow. OCTOBER—Rehabilitation of storm-swept areas under way. Manufacturing activity, retail trade, and employment show gains.

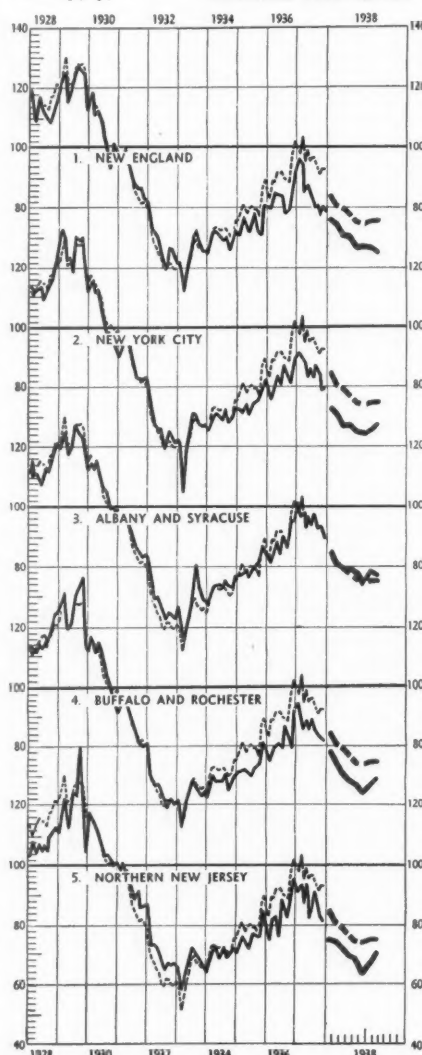
## 3. ALBANY AND SYRACUSE

AUG., 77.2 JULY, 78.4 AUG. 1937, 96.3  
 AUGUST—Percentage department store sales changes from previous August: Syracuse +4, Northern State -2, Central State -14. SEPTEMBER—Percentage retail trade decreases from previous September: Albany-Utica 5, Binghamton 7, Syracuse 2; Gloversville retail trade up 1%. Wholesale trade changes: Albany +5, Syracuse -10. Apple crop 50% less than in 1937; farm income about even with last year. Payrolls and production vary from above to below a year ago. Heavy orders in Albany cement mills for storm and flood repair work. Re-employment gaining in Syracuse factories. Binghamton shoe production ahead of last year; film industry strong. OCTOBER—Trade and industry steady at a level considerably below last year.

## 5. NORTHERN NEW JERSEY

AUG., 71.4 JULY, 67.3 AUG. 1937, 91.0  
 AUGUST—Northern New Jersey department store sales 16% below previous August. SEPTEMBER—Newark retail trade volume 4% below previous September; wholesale trade off 18%. Bank clearings 26% below last year in Newark, off 25% in (Continued directly opposite)

— Regional  
 --- U. S.  
 Corrected for Seasonal Variation, 1928-32=100



## 2. NEW YORK CITY

AUG., 67.9 JULY, 65.9 AUG. 1937, 86.2  
 AUGUST—Percentage department store sales decreases from previous August: New York City 8, Bridgeport 7, Westchester-Stamford 9. SEPTEMBER—Percentage retail trade decreases from previous September: Bridgeport 15, New York City department store sales 6, parcel deliveries 3, hotel sales 12. Bank clearings 8% below last year in New York City, down 17% in Westchester County. New York City employment up 6% from August; payrolls showed a gain of 9%. Trade activity improved more than seasonally, exceeding last year's volume in spite of trucking strike. Collections continue slow. OCTOBER—Unseasonably warm weather caused retail sales to show a decline from 1937 of 4 to 7%. Building materials trade active.

## 4. BUFFALO AND ROCHESTER

AUG., 69.7 JULY, 67.0 AUG. 1937, 89.5  
 AUGUST—Percentage department store sales decreases from previous August: Buffalo 8, Rochester 5, Niagara Falls 9. SEPTEMBER—Percentage retail trade decreases from previous September: Buffalo 5, Jamestown 15, Elmira 8, Rochester 10. Crop yields good; farm prices generally below last year, with milk higher. Payrolls and production below year ago; steady to up in month. Buffalo steel operations advanced to 51% of capacity. Large increase in gasoline consumption noted. Collections slower than a year ago; generally steady since August. OCTOBER—High temperatures left the volume of retail trade at a level about 6% below last year. Buffalo building permits showed large increase over 1937.

Northern New Jersey. Production and payrolls below a year ago; up since August. Trucking strike hampered trade activities. Collections steady since August and even with last year. OCTOBER—Unusually high temperatures for the first part of the month tended to depress retail trade. Great property losses resulted from oil fire. Wholesale buying continued on a conservative basis.

## 6. PHILADELPHIA

AUG., 69.0 JULY, 69.5 AUG. 1937, 93.3  
 AUGUST—Percentage department store sales decreases from previous August: Trenton 10, Philadelphia-Wilmington 15, Scranton 4. SEPTEMBER—Percentage retail trade decreases from previous September: Allentown-Johnstown 15, Philadelphia 13, Reading-Williamsport 5, Harrisburg 3, York 6, Wilmington 8; Trenton trade up 3%, Scranton 2%. Philadelphia wholesale trade off 12% from previous September. Potato crop fairly heavy; prices very low. Production and payrolls vary in comparison with last year. Textile activity increased. Trenton plants operating at about 61% of capacity. Collections slow. OCTOBER—Sluggishness in clothing lines, due to warm weather, balanced by demand for house-furnishings.

## 8. CLEVELAND

AUG., 71.1 JULY, 71.9 AUG. 1937, 105.8  
 AUGUST—Percentage department store sales decreases from previous August: Cleveland 16, Akron 18, Toledo 15. SEPTEMBER—Percentage retail trade decreases from previous September: Cleveland 20, Akron 11, Canton 40, Lima 10, Toledo 18. Wholesale trade decreases: Cleveland 15, Akron 12, Toledo 18. Crops good; prices low. Production and payrolls below last year. Month-to-month improvement in rayon, knit goods, screw machine products, men's clothing, rubber, and automotive parts industries. Little or no labor trouble in the area. Collections steady to below last year. OCTOBER—Employment reported increasing. Retail trade showed gains. Wholesale activity holding even. Industrial activity on upward trend.

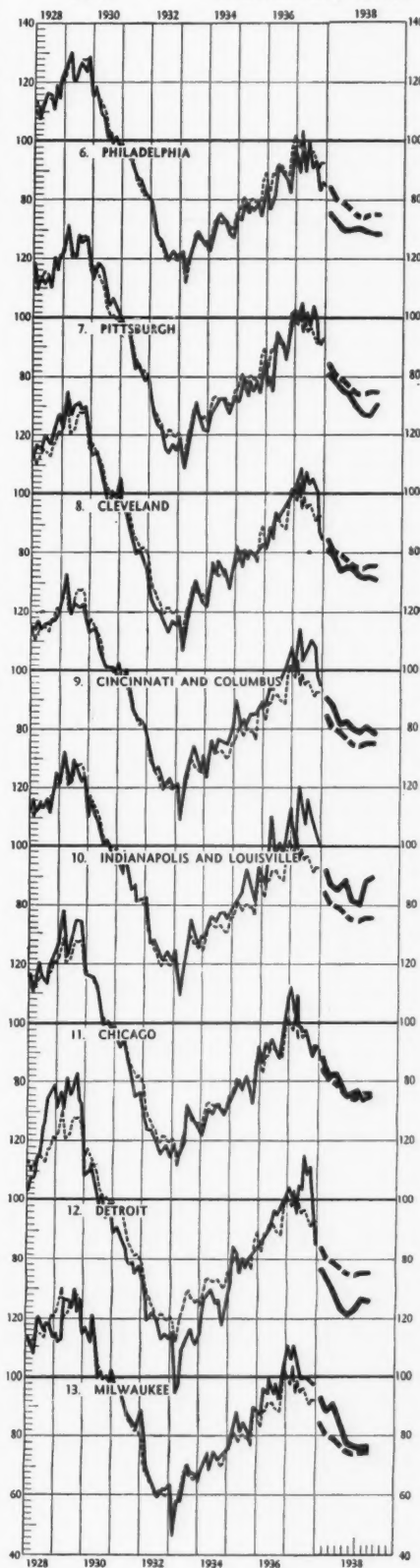
## 10. INDIANAPOLIS AND LOUISVILLE

AUG., 89.8 JULY, 88.4 AUG. 1937, 113.0  
 AUGUST—Percentage department store sales decreases from previous August: Louisville 11, Indianapolis 4, Fort Wayne 10. SEPTEMBER—Percentage retail trade decreases from previous September: Louisville-Fort Wayne 10, Indianapolis 6, Terre Haute 10; Evansville trade up 5%. Wholesale trade decreases: Louisville 20, Indianapolis 15. Crops in good condition; favorable tobacco prices anticipated. Payrolls and production generally down from year ago; up in Evansville. Farm implement production off 40% from last year. Collections steady to poorer than September, 1937. OCTOBER—Automotive strike in Evansville. Manufacturing activity as a whole showed slight gains. Retail and wholesale trade slightly behind 1937.

## 12. DETROIT

AUG., 66.0 JULY, 66.4 AUG. 1937, 108.9  
 AUGUST—Detroit department store sales off 23% from previous August. SEPTEMBER—Percentage retail trade decreases from previous September: Detroit 15, Grand Rapids 10, Saginaw 25. Wholesale trade decreases: Detroit 25, Grand Rapids 10. Grain and corn yields good, fruit fair; prices below last year. Payrolls and production below year ago; up since August. Automobile production down somewhat in month due to model change-over. Payrolls increased by refrigerator and automobile parts manufacturers. Collections somewhat slow in comparison with last year; steady to improved in month. OCTOBER—Thousands of automotive employees returned to work as production of new models began. Furniture sales increased.

—Regional  
 --- U. S.  
 Corrected for Seasonal  
 Variation, 1928-32=100



## 7. PITTSBURGH

AUG., 71.4 JULY, 66.9 AUG. 1937, 104.2  
 AUGUST—Percentage department store sales decreases from previous August: Pittsburgh 18, Wheeling 14, West Virginia State 9. SEPTEMBER—Percentage department store sales decreases from previous September: Erie-Parkersburg-Huntington 15, Pittsburgh 18, Clarksburg-Bluefield 20; Youngstown-Charleston retail trade up 5%. Wholesale trade changes: Erie -20, Pittsburgh -15, Charleston +5. Crops good; prices low. Production and payrolls down from year ago in Pittsburgh, steady in Charleston, up in Youngstown. Pittsburgh steel rate rose to 34 per cent of capacity; Youngstown operations climbed to over 50%. OCTOBER—Trade remained hesitant. Industrial activity reached best level since November.

## 9. CINCINNATI AND COLUMBUS

AUG., 79.9 JULY, 81.3 AUG. 1937, 111.1  
 AUGUST—Percentage department store sales decreases from previous August: Cincinnati 9, Dayton 14, Columbus 6. SEPTEMBER—Percentage retail trade decreases from previous September: Cincinnati 12, Dayton 10, Springfield 20, Columbus 5, Zanesville 25, Lexington 3; Portsmouth retail trade up 10%. Cincinnati-Columbus wholesale trade off 10%. Crop yields above average; prices very low in comparison with last year. Payrolls and production generally below last year; steady to up in month. Cincinnati manufacturing employment about 10% below 1937. Most industries on short time schedules with reduced forces. Collections steady to slow. OCTOBER—Retail volume gained due to favorable weather and Fall sales.

## 11. CHICAGO

AUG., 74.0 JULY, 74.4 AUG. 1937, 96.0  
 AUGUST—Percentage department store sales changes from previous August: Chicago -7, Peoria +2. SEPTEMBER—Percentage retail trade changes from previous September: Chicago -13, Rockford +10, Peoria 0, South Bend -25. Chicago wholesale trade off 5%. Corn crop largest in years; prices about 25% below last year. Production and payrolls below last year; steady to up in month. Automotive plants on three and four-day week. Furniture and machine tool manufacturing below last year. Collections steady with year ago. OCTOBER—Production schedules practically unchanged. Little improvement noted in employment. Wholesale buying fairly spotty, while retail trade continued to make small advances.

## 13. MILWAUKEE

AUG., 76.5 JULY, 76.5 AUG. 1937, 100.5  
 AUGUST—Milwaukee department store sales 8% below previous August. SEPTEMBER—Percentage retail trade decreases from previous September: Milwaukee 15, Madison 0, Green Bay 5. Milwaukee wholesale trade off 10%. Crop yield good; prices low. Production and payrolls down from last year in Milwaukee, steady in Madison, up in Green Bay. Sales of manufactured goods above 1937. Milwaukee shoe production on upgrade. Green Bay paper mills still operating full time; orders somewhat lower than in August. Capital goods industries somewhat slower in month. Collections steady to slow. OCTOBER—Automobile strike settled. Retail volume continued about 10% below last year. Wholesale trade about even.



## 14. MINNEAPOLIS AND ST. PAUL

AUG., 86.5 JULY, 86.0 AUG. 1937, 98.9  
 AUGUST—Minneapolis-St. Paul-Duluth-Superior department store sales 2% above previous August. SEPTEMBER—Percentage retail trade decreases from previous September: Duluth 15, Minneapolis-Billings 8, St. Paul 4, La Crosse-Sioux Falls 0, Fargo 5, Butte 10, Great Falls 15. Wholesale trade decreases: Duluth 8, Minneapolis-Great Falls 15. Wheat and other crops very large; farm income reduced due to low prices. Production and payrolls steady to down in comparison with 1937. Butte mines opened, increasing employment. Sleeping-sickness killed 3,000 horses. Warehouse strike in St. Paul. Collections slow. OCTOBER—Approach of hunting season brought rise in sales of hunting supplies. Trade rather sluggish.

## 16. ST. LOUIS

AUG., 77.2 JULY, 82.1 AUG. 1937, 90.8  
 AUGUST—Percentage department store sales changes from previous August: St. Louis 0, Springfield (Mo.) +3, Quincy -6. SEPTEMBER—Percentage retail trade decreases from previous September: St. Louis 2, Springfield (Mo.) 6, Springfield (Ill.) 13, Quincy 4. St. Louis wholesale trade off 4% from last September. Vegetable crops good; fruit damaged by early frosts and pests. Production and payrolls generally below last year; steady with 1937 in Springfield, Ill. Boot and shoe orders increased. Quincy plants on part-time. Hardware and building supply lines improved. Collections fairly slow. OCTOBER—Fall lines lacked vigor because of mild weather. Shoe manufacturing somewhat ahead of last October.

## 18. MARYLAND AND VIRGINIA

AUG., 89.7 JULY, 91.3 AUG. 1937, 105.5  
 AUGUST—Percentage department store sales changes from previous August: Baltimore -4, Washington +4, Richmond +2. SEPTEMBER—Percentage retail trade changes from previous September: Baltimore -4, Washington-Norfolk-Roanoke +2, Lynchburg -8, Bristol +10. Wholesale trade changes: Baltimore -8, Norfolk +5, Richmond +2. Tobacco crop good; price prospects favorable. Payrolls and production vary. Richmond production of cigarettes, leaf tobacco, and cotton textiles expanded. Bristol overall manufacturing, hosiery, tannery, and lumber mills operating at capacity. Lynchburg shoe sales above year ago. Collections fair. OCTOBER—Slight advances noted in retail, wholesale, and industrial activity.

## 20. ATLANTA AND BIRMINGHAM

AUG., 96.1 JULY, 94.3 AUG. 1937, 112.1  
 AUGUST—Percentage department store sales changes from previous August: Atlanta +4, Birmingham -13, Montgomery -4, Chattanooga -5, Nashville -3. SEPTEMBER—Percentage retail trade changes from previous September: Atlanta-Macon -4, Augusta-Columbus 0, Savannah -12, Birmingham -20, Montgomery +2, Chattanooga +6, Knoxville +5, Nashville -5. Wholesale trade decreases: Atlanta 0, Birmingham 25, Nashville 10. Georgia cotton damaged considerably by boll weevil; price disappointing. Payrolls and production generally steady with 1937. Textile orders improving. Collections fairly steady with last year. OCTOBER—Retail trade slightly above last year's level. Bank credit expanding.

## 15. IOWA AND NEBRASKA

AUG., 77.5 JULY, 84.6 AUG. 1937, 85.1  
 AUGUST—Omaha department store sales 5% above previous August. SEPTEMBER—Percentage retail trade decreases from previous September: Burlington-Davenport-Des Moines-Sioux City-Omaha 5, Cedar Rapids 2, Dubuque 10, Waterloo 0, Lincoln 8. Wholesale trade decreases: Sioux City 15, Des Moines 3, Omaha 5. Corn crop excellent; prices below 1937. Production and payrolls generally below last year; steady in Burlington and Cedar Rapids, up in Omaha and Des Moines. Heavy industries somewhat slower; increased activity in food products lines. Strike in Sioux City packing plant. Collections somewhat improved. OCTOBER—Fall wheat in good condition. Retail trade about 15% below a year ago, due to continued warm weather.

## 17. KANSAS CITY

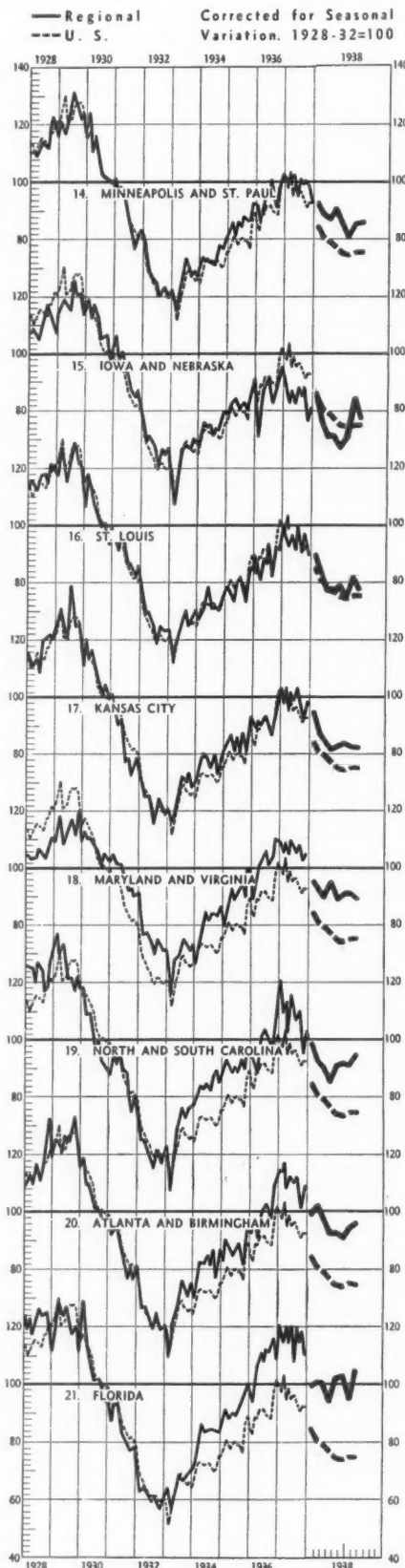
AUG., 82.6 JULY, 83.4 AUG. 1937, 102.6  
 AUGUST—Percentage department store sales changes from previous August: Kansas City -6, Wichita -8, Oklahoma City +6, Tulsa +2. SEPTEMBER—Percentage retail trade decreases from previous September: Kansas City-Wichita 10, St. Joseph 8, Topeka-Tulsa 5, Oklahoma City 15. Kansas City-Oklahoma City wholesale trade off 10%. Fall wheat in need of rain. Cattle prices and receipts above 1937; grain receipts also show increase. Payrolls and production below last year. Employment reduced in oil industry due to curtailment of operations. Flour milling up 20% from 1937. Collections generally slower than a year ago. OCTOBER—Wholesale and retail trade slow, partly due to warm weather. Building activity at low ebb.

## 19. NORTH AND SOUTH CAROLINA

AUG., 95.8 JULY, 91.0 AUG. 1937, 107.8  
 AUGUST—North and South Carolina department store sales 2% below previous August. SEPTEMBER—Percentage retail trade changes from previous September: Asheville -3, Winston-Salem-Charlotte -2, Raleigh +2, Wilmington -5, Charleston +10, Columbia +4, Greenville -10. Wholesale trade decreases: Wilmington -5, Charleston 0, Winston-Salem -4. Old Belt tobacco crop best in recent years; prices good. Production and payrolls steady to up in comparison with 1937. Textile and furniture industries show gains. Twin tornadoes damaged Charleston business section severely. Collections generally steady. OCTOBER—Retail trade volume about 15% below last year. Plans announced for improving harbor channels.

## 21. FLORIDA

AUG., 105.9 JULY, 95.4 AUG. 1937, 120.4  
 AUGUST—Florida department store sales 5% below previous August. SEPTEMBER—Percentage retail trade decreases from previous September: Jacksonville-Miami 8, Tampa 0. Wholesale trade decreases: Jacksonville 5, Tampa 20. Citrus crop one of largest in years; shipments quite heavy for early season; prices only fair. Vegetable shipments light. Production and payrolls down from year ago in Miami and Tampa, up in Jacksonville. Sawmills increased activity. Jacksonville cigar manufacturers increased production for holiday sales. Collections slow. OCTOBER—Radio and refrigerator sales 15% above last year. Department store sales even with 1937. Upward trend noted in wholesale activity.



## 22. MEMPHIS

AUG., 80.9 JULY, 78.7 AUG. 1937, 96.9

AUGUST—Percentage department store sales changes from previous August: Memphis —4, Fort Smith +6, Little Rock —2. SEPTEMBER—Percentage retail trade decreases from previous September: Memphis-Fort Smith 10, Little Rock 5. Memphis wholesale trade up 10% from last September. Cotton crop below average due to weevil and Government control of acreage; prices uncertain. Lumber and furniture industries advancing; minor labor troubles reported in Fort Smith plants. Building permits show marked increase over a year ago. Collections steady to better than in September, 1937. OCTOBER—Warm weather retarded retail sales. Wholesale dry goods running about 20% above last year. Furniture manufacturing active.

## 24. TEXAS

AUG., 103.9 JULY, 103.0 AUG. 1937, 119.6

AUGUST—Percentage department store sales changes from previous August: Dallas —3, Fort Worth +8, Houston —1, San Antonio +4. SEPTEMBER—Percentage retail trade changes from previous September: Dallas —15, Fort Worth +1, Amarillo-Lubbock-Wichita Falls 0, El Paso —9, Houston —5, Galveston —3, Waco-Shreveport —10, San Antonio +2. Wholesale trade decreases: Dallas-Shreveport 15, Houston 6, San Antonio 3, Fort Worth 9. Feed crops good; cotton acreage small. Production and payrolls steady to below 1937. Lumber and oil industries steady with previous month. Collections steady to slow. OCTOBER—Warm weather blamed for lack of improvement in retail trade. Texas State Fair opened October 8.

## 26. SALT LAKE CITY

AUG., 84.2 JULY, 81.1 AUG. 1937, 106.4

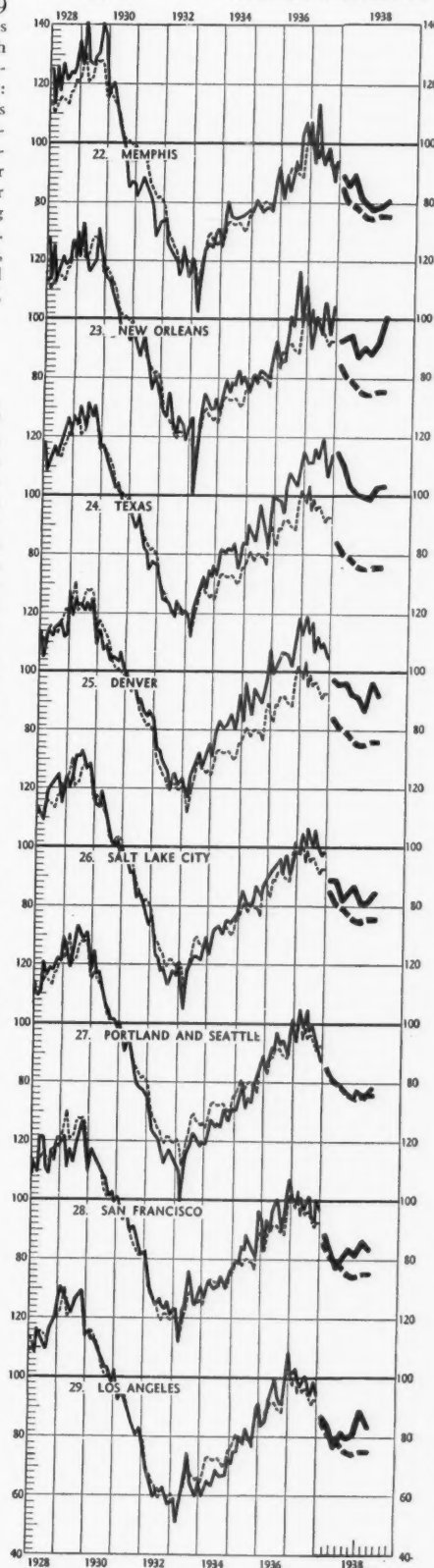
AUGUST—Salt Lake City department store sales 1% above last August. SEPTEMBER—Salt Lake City retail trade 7% below previous September; special sales during latter part of month aided volume; wholesale trade off 5%. Fruit, grain, bean, potato, and beet yields good; low prices seriously affecting farm purchasing power. Turkey crop about 15% below last year; better prices expected. Production and payrolls 10% below last year; up about 15% since August. Metal mining at a standstill; some large mines still closed. Coal production improved, but below a year ago. Collections steady with 1937. OCTOBER—Building permits considerably ahead of 1937. Little change noted in the volume of wholesale and retail trade.

## 28. SAN FRANCISCO

AUG., 83.7 JULY, 86.2 AUG. 1937, 101.9

AUGUST—Percentage department store sales decreases from previous August: San Francisco 4, Oakland 6. SEPTEMBER—Percentage retail trade changes from previous September: San Francisco —15, Oakland —10, Sacramento 0, Fresno +10. San Francisco wholesale trade off 15%. Grape crops excellent; prices fairly steady. Figs and peaches poor. Payrolls and production generally below 1937. Furniture manufacturing somewhat improved. Lumber business quiet. Building activity offset decrease in cannery employment. Trade still handicapped by strikes. Collections fair. OCTOBER—Department store strike continued. Contract signed by wholesalers and warehousemen, but inter-union difficulties arose.

—Regional  
--- U. S.  
Corrected for Seasonal Variation. 1928-32=100



## 23. NEW ORLEANS

AUG., 100.1 JULY, 92.2 AUG. 1937, 106.1

AUGUST—New Orleans department store sales 6% above previous August. SEPTEMBER—Percentage retail trade changes from previous September: New Orleans +5, Jackson —5, Meridian —10. New Orleans wholesale trade off 5%. Cotton yield and price about 25% below normal. Sugar production and price compare favorably with 1937. Payrolls and production steady to down in comparison with last year. New Orleans sugar manufacturing activity aiding seasonally dependent industries. Collections steady with last year in New Orleans; slow in Jackson and Meridian. OCTOBER—Lumber orders 41% above last year. Department store sales slightly below 1937 level. Wholesale dry goods and notions rather slow.

## 25. DENVER

AUG., 92.0 JULY, 96.8 AUG. 1937, 111.4

AUGUST—Denver department store sales 9% below last August. SEPTEMBER—Percentage retail trade decreases from previous September: Denver 7, Albuquerque 12. Denver wholesale trade off 12%. Warm weather kept retail trade steady and wholesale trade steady to slow. Bean crop prospects poor; drought caused damage early in season and late rains did little good. Other crops good; prices steady to weak. Payrolls and production down from 1937; steady since August. Industrial outlook improved by seasonal employment and Government construction projects. Collections slow. OCTOBER—Harvest of bumper beet crop under way. Gradual improvement in seasonal retail lines; textiles and shoes in demand.

## 27. PORTLAND AND SEATTLE

AUG., 78.2 JULY, 74.5 AUG. 1937, 99.6

AUGUST—Percentage department store sales decreases from previous August: Seattle 6, Spokane 3, Portland 2. SEPTEMBER—Percentage retail trade decreases from previous September: Seattle 16, Spokane 6, Portland 11. Wholesale trade decreases: Seattle 23, Portland 9. Peach crop above average; oat crop very small. Milk production largest on record. Grain being held for better prices. Production and payrolls below last year. Lumber production exceeding orders. Cloak and suit industry operating at lower level than in 1937. Collections quite slow. OCTOBER—Department store sales lagged 5 to 10% below last year. Fruit crop suffering from worm damage; apple crop short. Wholesale trade unchanged.

## 29. LOS ANGELES

AUG., 83.8 JULY, 89.7 AUG. 1937, 100.8

AUGUST—Percentage department store sales changes from previous August: Los Angeles —7, Phoenix +8. SEPTEMBER—Percentage retail trade decreases from previous September: Los Angeles 13, San Diego 7, Phoenix 0. Los Angeles wholesale trade off 5%. Crop conditions satisfactory; prices continue low; farm income off 20 to 25% from last year. Tuna sales low; prices dropped. Retail groceries and meats off in September due to strike of butchers in chain stores. Payrolls and production generally below last year. Aviation, building, petroleum and motion picture industries operating at favorable levels. Collections slow. OCTOBER—Little improvement in trade. Building activity continued to increase.

# INDUSTRIAL AND COMMERCIAL FAILURES (REVISED FIGURES)

	NUMBER OF FAILURES			CURRENT LIABILITIES *			TOTAL LIABILITIES *			DUN'S INSOLVENCY INDEX †						
	1938	1937	1936	1938	1937	1936	1938	1937	1936	UNADJUSTED		ADJUSTED ‡		1938	1937	1936
										1938	1937	1938	1937			
Jan. . . .	1,377	841	1,126	21,415	12,003	21,413	27,162	14,992	24,522	76.2	47.7	66.0	62.0	38.8	53.7	
Feb. . . .	1,149	755	919	21,028	14,004	22,494	25,501	22,887	28,413	75.2	50.6	60.9	65.4	44.0	52.5	
Mar. . . .	1,167	861	986	40,325	22,591	20,046	80,373	78,878	23,273	64.8	47.1	57.7	64.2	47.1	57.7	
Apr. . . .	1,172	818	865	21,147	12,893	20,757	29,355	13,628	24,472	65.1	48.3	52.5	63.2	47.4	51.5	
May . . . .	1,123	875	874	19,139	13,088	20,505	19,831	14,965	25,963	59.8	47.6	48.8	59.2	47.6	48.8	
June . . . .	1,073	703	818	15,918	12,829	21,395	16,892	16,737	24,790	64.1	41.1	47.3	67.5	43.3	49.8	
July . . . .	1,038	651	669	14,761	12,780	14,318	15,008	13,955	35,011	57.2	37.9	40.1	64.3	42.1	44.6	
Aug. . . .	1,015	736	677	16,382	14,950	10,034	17,252	19,473	10,584	53.8	39.7	37.4	63.3	46.7	44.0	
Sept. . . .	866	584	609	14,341	9,818	12,906	15,183	11,308	15,074	51.6	35.2	34.8	61.4	41.9	41.4	
Oct. . . . .		815	642		14,079	9,951		15,381	12,374		45.2	38.1		49.1	41.4	
Nov. . . . .		842	713		16,400	16,063		17,709	19,022		52.7	45.9		51.2	45.0	
Dec. . . . .		1,009	709		27,818	13,291		36,963	14,452		58.0	43.7		58.0	43.7	
Total . . . .		9,490	9,607		183,253	203,173		276,876	257,950		45.9	47.8				

\* In thousands of dollars.

† Apparent annual failures per 10,000 enterprises.

‡ For seasonal variation.

## ANALYZING THE RECORD OF INDUSTRIAL and COMMERCIAL FAILURES

SEPTEMBER FAILURES REACH LOW POINT OF YEAR

DURING the month of September there were 866 commercial and industrial failures with current liabilities of \$14,341,000. In August there were 1,015 failures with \$16,382,000 liabilities, and a year ago, in September, 1937, 584 failures with liabilities of \$9,818,000. The number of failures is approximately on the level of September, 1934 and 1935, but current liabilities are only half as great as in the earlier years because of fewer large failures.

According to the insolvency index September failures occurred at the rate of 51.6 a year per 10,000 business enterprises. The failure rate has been on a general downward course from the high point of 76.2 in January. This decline has been for the most part seasonal. The adjusted index shows that, with the seasonal influence removed, there was no appreciable difference in the general level of failures prevailing

*Revision of the National Bankruptcy Act has eliminated Section 77-B. Although the new Act, effective September 22, 1938, provides for corporate reorganizations, the provisions of the law are such that only corporations with secured indebtedness are likely to petition for reorganization. Henceforth petitions for reorganization will appear as an integral part of the failure record. A detailed account of the changes required in the past and future records appears in this article.*

in January and in September. September is normally the month of fewest failures and increasing numbers may be expected through the Fall months in accord with the seasonal pattern.

The Insolvency Index takes into consideration the varying number of working days in a month and the varying number of firms in business. The number of failures is placed on a yearly basis by dividing by the number of working days in the month and multiplying by the working days in the year.

The result is placed on a basis of failures per 10,000 enterprises by dividing by the number of firms in the DUN & BRADSTREET Reference Book and multiplying by 10,000.

The figures in the table at the top of the page are based on a failure record revised to include the 77-B cases, which were formerly tabulated separately. Revision of the National Bankruptcy Act elimi-

nated Section 77-B; although the new Act, effective September 22, 1938, provides for corporate reorganizations, the law reads in such a way that only corporations with secured indebtedness are likely to petition for reorganization. Section 77-B contained no such limitations, so that the new cases of reorganization will not be directly comparable with the old. For the back figures from June, 1934, through August, 1938, the 77-B cases have been combined with the regular failures. Henceforth peti-



tions for corporate reorganization will appear as an integral part of the failure record.

The revision involves more than a simple addition of all 77-B cases to failures. Of the total 3,543 cases reported up to September 1, 1938, only 2,748 were commercial and industrial cases of the type normally covered in the failure record. Of these, some 273 were already in receivership when petitioning for reorganization and had been counted as failures when the receiver was appointed. Therefore the number of failures was actually increased by 2,475 cases with \$1,006,947,000 of total liabilities, of which \$427,405,000 were current.

### Liabilities

The liability figure in the failure record has always been approximately one of current obligations. (The 1936 figure divided about 96 per cent current and 4 per cent deferred.) With the addition of the 77-B cases, many of which sought only an adjustment of funded debt, it is now advisable to show both current and total liabilities, and such figures will be presented hereafter. Attention is especially directed to the fact that, for the purposes of the failure record, current liabilities include not only all accounts and notes payable, but also all obligations, whether in secured form or not, known to be held by banks, officers, affiliated companies, supplying companies, or the Government. Deferred liabilities, the difference between current as defined above and the total, are therefore long-term obligations held by the public.

### Increases

The effect of the consolidation has been to increase the number of failures since the beginning of 1934 by 5 per cent, or the yearly totals as follows: 1934, 3.1 per cent; 1935, 6.4 per cent; 1936, 4.6 per cent; 1937, 5.2 per cent; and 1938 through August 5.5 per cent. The effect on the insolvency index was to raise the level an average of 2.5 points. The greatest increase in the

index in any one month was 5.3 points in May, 1935. The most important change, of course, appears in the size classifications since the larger concerns were most frequent users of the 77-B procedure. It was found that the number of failures with liabilities of \$100,000 and over increased as much as 147 per cent in 1937. The following table shows the percentage increases in the numbers in size groups caused by the addition of 77-B cases:

LIABILITIES	1934	1935	1936	1937	1938*
Under \$5,000.....	.0	.1	.1	.1	.0
\$5,000-\$25,000.....	1.2	3.7	2.6	2.6	3.0
\$25,000-\$100,000.....	7.3	23.2	18.7	23.0	26.9
\$100,000 and over.....	42.8	97.5	80.9	147.4	144.4
Total .....	3.1	6.4	4.6	5.2	5.5

\* January-August.

Among the industry groups it was not unexpected to find the greatest addition to manufacturing, since manufacturers outranked others in the use of 77-B. Manufacturing failures were increased an average of 15 per cent, compared with an increase of 9 per cent in commercial service (13 per cent in 1936 and 1937); 7 per cent in wholesale trade; 2 per cent in retail trade; and 1.5 per cent in construction.

The geographic distribution of 77-B cases followed quite closely that of failures, so that increases by the Federal Reserve Districts averaged for the most part between 2 and 6 per cent. Additions to the Boston, New York, and Chicago districts averaged slightly more, and in the Dallas district there

was a very slight increase in one year, none in the others.

Current liabilities were increased 55 per cent. However, after a sudden jump in June, 1934, the new trend, on the higher level, is not unlike the old.

### September Failures

A sharp drop in the number of both wholesale and retail trade failures was the factor which caused September failures to reach the year's low point. The drop was general throughout all lines of trade.

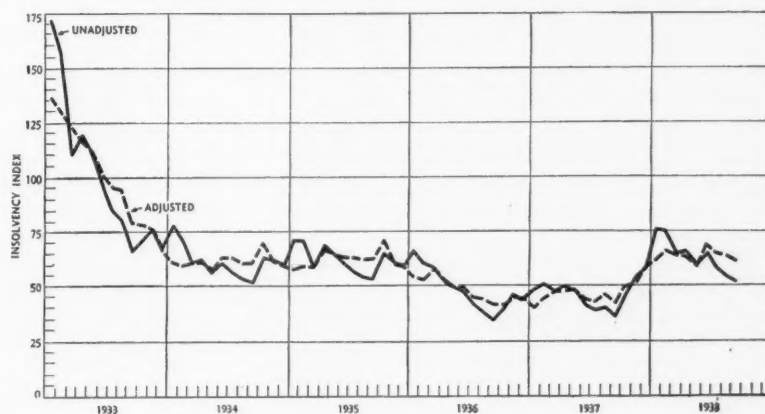
Manufacturing failures, on the other hand, increased 6 per cent, with contrary movements in the sub-groups. Lumber, paper, publishing, fuel, and machinery failures increased; food, textile, and drug failures dropped.

Failures in all five main industry groups were greatly in excess of those reported a year ago. Retail failures led with an increase of 56 per cent over September, 1937.

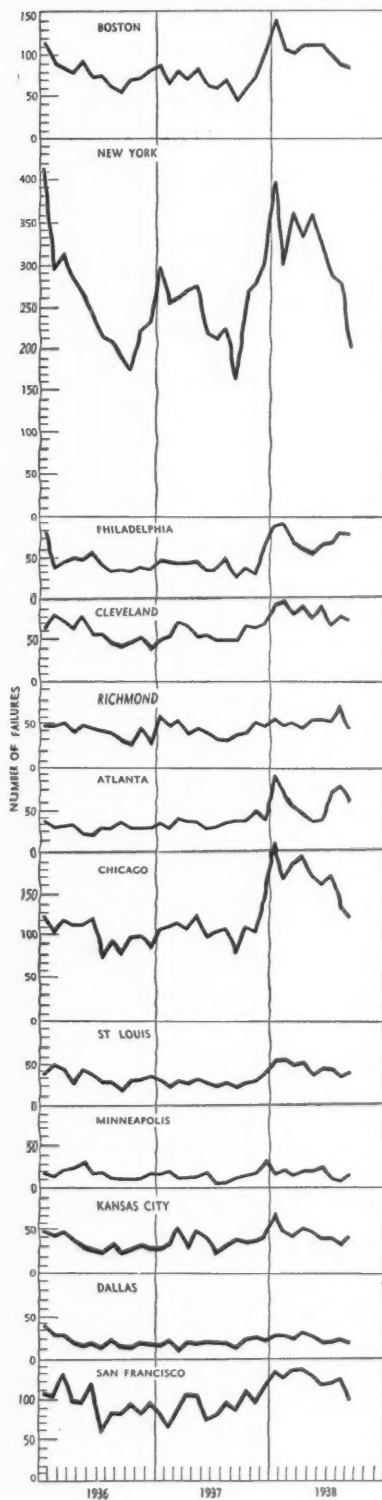
INDUSTRY GROUPS	September 1938	September 1937	Per Cent Change
Manufacturing .....	184	127	+45
Wholesale Trade .....	72	54	+33
Retail Trade .....	528	338	+56
Construction .....	49	37	+32
Commercial Service .....	33	28	+18
Total .....	866	584	+48

There was little difference in the distribution of failures by size in September, August, and September of last year. A very stable proportion was maintained in the three periods at 87 per

MONTHLY TREND OF THE INSOLVENCY INDEX



# FAILURES BY RESERVE DISTRICTS



# FAILURES BY DIVISIONS OF INDUSTRY—SEPTEMBER, 1938 AND 1937

REVISED FIGURES—SEE ACCOMPANYING TEXT  
(Liabilities in thousands of dollars)

	Number			Current Liabilities		
	Sept. 1938	Aug. 1938	Sept. 1937	Sept. 1938	Aug. 1938	Sept. 1937
TOTAL UNITED STATES . . . . .	866	1,015	584	14,341	16,382	9,818
TOTAL MANUFACTURING . . . . .	184	173	127	5,227	6,147	3,954
Foods . . . . .	31	37	32	1,506	747	692
Textiles . . . . .	33	41	13	981	2,254	687
Forest Products . . . . .	14	12	11	480	370	540
Paper, Printing and Publishing . . . . .	18	9	9	415	434	121
Chemicals and Drugs . . . . .	6	8	8	65	91	196
Fuels . . . . .	8	2	1	696	76	105
Leather and Leather Products . . . . .	6	6	3	57	62	71
Stone, Clay, Glass and Products . . . . .	9	7	4	124	549	51
Iron and Steel . . . . .	11	11	4	204	764	86
Machinery . . . . .	18	12	6	261	256	55
Transportation Equipment . . . . .	4	6	8	77	340	158
All Other . . . . .	26	22	28	361	204	1,192
TOTAL WHOLESALE TRADE . . . . .	72	122	54	1,535	2,860	1,288
Farm Products, Foods, Groceries . . . . .	28	50	17	632	940	296
Clothing and Furnishings . . . . .	4	8	2	72	67	12
Dry Goods and Textiles . . . . .	4	2	1	55	220	6
Lumber, Building Materials, Hardware . . . . .	6	12	5	149	338	46
Chemicals and Drugs . . . . .	3	1	3	10	2	416
Fuels . . . . .	3	3	3	228	114	75
Automotive Products . . . . .	5	14	5	31	348	56
Supply Houses . . . . .	5	4	4	188	31	134
All Other . . . . .	14	28	14	170	800	247
TOTAL RETAIL TRADE . . . . .	528	629	338	6,450	5,903	3,210
Foods . . . . .	145	167	113	832	884	613
Farm Supplies, General Stores . . . . .	23	27	22	191	178	210
General Merchandise . . . . .	20	26	12	109	451	116
Apparel . . . . .	95	123	43	735	1,559	245
Furniture, Household Furnishings . . . . .	43	57	22	2,565	701	588
Lumber, Building Materials, Hardware . . . . .	30	35	20	554	488	284
Automotive Products . . . . .	41	47	31	491	414	373
Restaurants . . . . .	61	61	28	368	625	338
Drugs . . . . .	37	47	20	257	228	153
All Other . . . . .	33	39	27	348	375	290
TOTAL CONSTRUCTION . . . . .	49	57	37	782	1,128	506
General Contractors . . . . .	8	9	5	163	198	61
Carpenters and Builders . . . . .	16	20	9	207	721	151
Building Sub-contractors . . . . .	24	27	22	196	205	262
Other Contractors . . . . .	1	1	1	126	4	32
TOTAL COMMERCIAL SERVICE . . . . .	33	34	28	347	344	860
Cleaners and Dyers, Tailors . . . . .	9	10	4	109	68	29
Haulage, Buses, Taxis, etc. . . . .	8	5	8	52	44	380
Hotels . . . . .	1	3	4	..	116	196
Laundries . . . . .	6	2	1	120	16	20
Undertakers . . . . .	1	5	2	15	51	10
All Other . . . . .	8	9	9	51	49	225

cent for failures with liabilities under \$25,000, 10 per cent for failures with liabilities between \$25,000 and \$100,000, and 3 per cent for liabilities of \$100,000 and over.

### New Classification

A new size classification has been set up for the large failures with liabilities of \$1,000,000 or more. There was one such large failure in both August and September. The size classification is based on total liabilities, so that a failure may be found in the million-dollar group, even though its current liabilities may be appreciably less than a million dollars. Many of the large 77-B cases which desired only to adjust funded debt are in this classification.

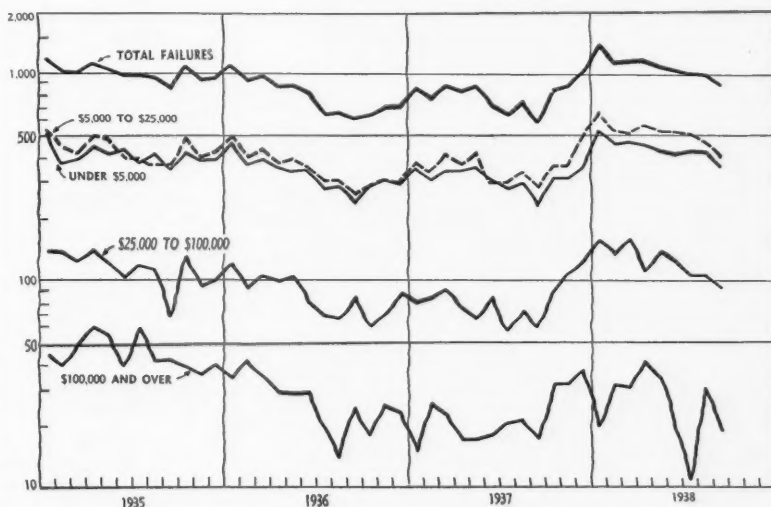
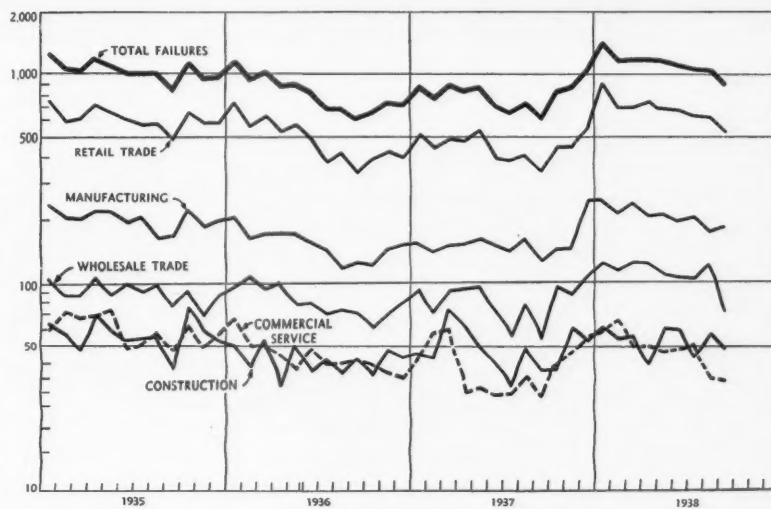
FEDERAL RESERVE DISTRICT	Jan.-Sept. 1938	Jan.-Sept. 1937	Per Cent Change
Minneapolis . . . . .	168	137	+ 23
Kansas City . . . . .	410	316	+ 30
New York . . . . .	2,838	2,160	+ 31
San Francisco . . . . .	1,114	787	+ 42
Richmond . . . . .	489	368	+ 44
Dallas . . . . .	182	123	+ 48
Boston . . . . .	944	631	+ 50
Cleveland . . . . .	760	494	+ 54
Chicago . . . . .	1,525	958	+ 59
Philadelphia . . . . .	631	368	+ 71
Atlanta . . . . .	524	278	+ 88
St. Louis . . . . .	395	204	+ 94
Total . . . . .	9,980	6,824	+ 46

Varying trends were apparent in the different sections of the country. In New England there was little change from August. In the populous districts of New York, Chicago, and San Francisco and in the two Southern districts of Atlanta and Richmond there were sharp declines, evidenced particularly in retail trade. On the other hand, the Midwest sections covered by the St. Louis, Minneapolis, and Kansas City districts reported increased failures. The monthly increase in manufacturing failures took place in ten of the twelve districts, New York and Richmond being the two exceptions.

### Canadian Failures

Canadian failures totalled 255 in the third quarter of 1938 with liabilities of \$2,505,000, compared with 232 with \$2,209,000 liabilities in the second quarter, and 186 with \$1,616,000 liabilities

FAILURES BY INDUSTRY GROUPS AND SIZE OF LIABILITIES



in the corresponding third quarter of 1937.

The 10 per cent increase over the second quarter was caused by a rise in manufacturing failures of 27 per cent and in retail trade failures of 6 per cent. Construction failures rose from 9 to 13. Failures in the other two groups were few in number.

The two Provinces in which the bulk of failures occur moved in contrary fashion—Quebec upward with an increase of 39 per cent and Ontario downward with an 18 per cent decrease. The total monthly increase was more

marked in the sixteen largest cities than was the increase in the balance of the country.

The increase of 37 per cent over the third quarter of 1937 was caused by similar changes; that is, a higher rate of increase in manufacturing than in retail trade failures, the increases in Quebec against decreases in Ontario. Nova Scotia and Manitoba reported failures considerably in excess of those a year ago.

Note: In DUN'S STATISTICAL REVIEW there are published more detailed failure statistics by States, large cities, industrial divisions, size of liabilities, and special quarterly figures by industries.



# SIGNIFICANT BUSINESS INDICATORS

COMPILED BY THE STATISTICAL STAFF OF "DUN'S REVIEW"  
More detailed figures appear in "DUN'S STATISTICAL REVIEW"

## Building Permit Values—215 Cities

Geographical Groups:	September 1938	September 1937	Change P. Ct.	August 1938	Change P. Ct.
New England .....	\$3,883,327	\$5,370,148	- 27.7	\$8,922,292	- 56.5
Middle Atlantic .....	36,327,921	22,273,113	+ 63.1	36,301,477	+ 0.1
South Atlantic .....	12,253,086	9,510,509	+ 28.8	9,159,216	+ 33.8
East Central .....	17,992,815	18,715,200	- 3.9	15,040,189	+ 19.6
South Central .....	7,737,074	6,534,884	+ 18.4	10,205,284	- 24.2
West Central .....	4,501,573	4,774,540	- 5.7	4,448,051	+ 1.2
Mountain .....	2,800,564	2,361,775	+ 18.6	1,619,294	+ 72.9
Pacific .....	16,307,356	17,228,859	- 5.3	15,328,612	+ 6.4
Total U. S. ....	\$101,803,716	\$86,769,028	+ 17.3	\$101,024,415	+ 0.8
New York .....	\$24,045,467	\$14,488,718	+ 66.0	\$27,586,446	- 12.8
Outside New York ..	\$77,758,249	\$72,280,310	+ 7.6	\$73,437,969	+ 5.9

## Bank Clearings—22 U. S. Cities

(Millions of dollars)

	Monthly			Daily Average		
	1938	1937	1936	1938	1937	1936
January .....	21,798	27,226	25,262	871.9	1,089.0	971.6
February .....	17,583	23,720	22,065	799.2	1,078.1	959.3
March .....	22,822	29,412	26,610	845.3	1,089.3	1,023.4
April .....	21,667	26,086	24,711	833.4	1,003.3	950.4
May .....	20,169	23,951	22,473	806.8	958.0	898.9
June .....	23,959	25,903	26,148	921.5	996.3	1,005.7
July .....	21,624	26,015	24,766	865.0	1,000.6	952.5
August .....	19,716	22,260	21,269	730.2	856.2	818.0
September .....	21,733	24,076	23,927	869.3	963.0	957.1
October .....	24,668	25,852	25,852	986.7	994.3	994.3
November .....	21,796	24,554	24,554	947.6	1,116.1	1,116.1
December .....	25,805	31,153	31,153	992.5	1,198.2	1,198.2
Total .....	300,918	298,790	298,790	996.7	987.1	987.1

## Bank Clearings for Individual Cities (000 omitted)

	September 1938	September 1937	Change P. Ct.	August 1938
Boston .....	\$803,835	\$876,224	- 8.3	\$790,996
Philadelphia .....	1,417,000	1,482,000	- 4.4	1,450,000
Buffalo .....	122,568	154,487	- 20.7	124,268
Pittsburgh .....	443,100	621,123	- 28.7	439,187
Cleveland .....	374,189	443,508	- 15.6	343,047
Cincinnati .....	242,200	269,559	- 10.1	209,718
Baltimore .....	259,362	293,915	- 11.8	258,520
Richmond .....	194,777	196,396	- 0.8	175,419
Atlanta .....	221,300	236,400	- 6.4	219,400
New Orleans .....	169,904	180,133	- 5.7	148,593
Chicago .....	1,170,699	1,429,895	- 18.1	1,125,704
Detroit .....	359,739	434,819	- 17.3	346,489
St. Louis .....	347,451	400,783	- 13.3	334,842
Louisville .....	136,823	152,778	- 10.4	126,412
Minneapolis .....	310,660	363,010	- 14.4	304,582
Kansas City .....	358,066	419,127	- 14.6	374,625
Omaha .....	117,844	137,814	- 14.5	123,929
Dallas .....	227,945	251,517	- 9.4	199,986
San Francisco .....	602,633	689,761	- 12.6	590,003
Portland, Ore. ....	129,350	152,580	- 15.2	124,361
Seattle .....	152,272	181,420	- 16.1	151,180
Total 21 Cities .....	\$8,161,717	\$9,367,249	- 12.9	\$7,961,261
New York .....	\$13,571,140	\$14,708,754	- 7.7	\$11,755,054
Total 22 Cities .....	\$21,732,857	\$24,076,003	- 9.7	\$19,716,315

## Dun & Bradstreet Weekly Food Price Index

The index represents the sum total of the wholesale price per pound of 31 commodities in general use:

Weeks:	1938	1937	1936	1935
Oct. 25 .....	\$2.38	\$2.74	\$2.77	\$2.73
Oct. 18 .....	2.39	2.80	2.75	2.74
Oct. 11 .....	2.42	2.82	2.76	2.74
Oct. 4 .....	2.42	2.86	2.74	2.76
Sept. 27 .....	2.43	2.88	2.75	2.73
Sept. 20 .....	2.42	2.92	2.78	2.77
Sept. 13 .....	2.44	2.89	2.82	2.77
Sept. 6 .....	2.42	2.86	2.84	2.77

HIGH LOW

1938.. \$2.53 Jan. 4	\$2.34 May 10
1937.. \$3.01 Mar. 16	\$2.56 Dec. 28
1936.. \$2.94 Dec. 29	\$2.52 May 19

## Dun & Bradstreet Daily Weighted Price Index 30 Basic Commodities

(1930-1932 = 100)

	1938			
	Oct.	Sept.	Aug.	July
1 .....	105.02	104.55	104.49	105.63
2 .....	104.68	104.36	104.36	104.36
3 .....	104.79	104.77	104.77	104.77
4 .....	104.40	104.64	104.64	104.64
5 .....	104.61	104.86	104.86	105.39
6 .....	104.99	103.73	103.73	106.32
7 .....	105.25	104.11	104.11	105.17
8 .....	105.28	104.46	103.80	105.19
9 .....	104.24	103.41	103.41	103.41
10 .....	105.35	103.67	103.67	103.67
11 .....	105.17	103.20	103.20	104.90
12 .....	104.61	102.55	102.55	105.35
13 .....	105.20	104.49	104.49	105.95
14 .....	105.32	105.12	105.12	105.30
15 .....	105.19	104.74	102.81	105.43
16 .....	104.59	102.99	102.99	102.99
17 .....	105.18	103.83	103.83	103.83
18 .....	104.25	103.98	103.98	105.10
19 .....	104.49	104.85	104.21	105.60
20 .....	104.90	104.54	104.54	105.25
21 .....	105.03	104.26	104.26	105.07
22 .....	104.96	104.25	104.21	105.33
23 .....	104.75	104.28	104.28	104.28
24 .....	105.17	104.04	104.04	104.04
25 .....	104.87	103.94	103.94	105.01
26 .....	104.96	105.04	103.98	105.08
27 .....	104.70	103.98	103.98	105.19
28 .....	105.25	104.21	104.21	104.88
29 .....	105.22	104.52	104.52	104.98
30 .....	105.15	104.51	104.51	104.51
31 .....	104.23	104.23	104.23	104.23

† Sunday. \* Markets closed.

HIGH LOW

1938.. 117.06 Jan. 10	102.43 June 2
1937.. 158.26 Apr. 5	114.83 Dec. 30
1936.. 142.65 Dec. 31	115.13 May 27

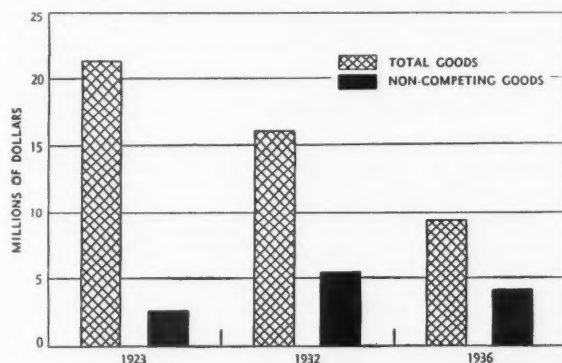
# THROUGH THE STATISTICIAN'S EYES

ODD AND INTERESTING ITEMS FROM THE MONTH'S RECORD

## Prison Labor

AN ARTICLE by Edward P. Sanford in the *Labor Information Bulletin* of the Bureau of Labor Statistics declares that one of the things that organized labor has consistently tried to overcome for more than a hundred years has been the competition in various trades of cheap prison labor. As a result of this activity, proportionately fewer convicts are employed in productive enterprise, although there has been an increase in prison population in the last decade or two. Furthermore, it was found that, out of every 1,000 inmates so employed, those engaged in work which competed directly with free labor declined from 708 in 1923 to 609 in 1932 and to 395 in 1936.

How has this been accomplished? Instead of producing brooms, hosiery, shirts, pants, shoes, furniture, and castings for the public through the open market, the prison labor



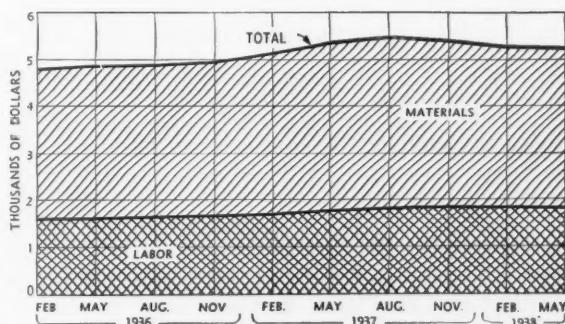
VALUE OF COMMODITIES PRODUCED BY PRISON LABOR, 13 States and the District of Columbia—Selected years 1923-1936—U. S. Bureau of Labor Statistics and Prison Industries Reorganization Administration—Production of goods and services which do not directly compete in the open market has increased in proportion to the total goods produced.

in a growing number of States is being utilized to perform services for the State government.

## Costs of Home Building

"IF ONE ACCEPTS the theory that the prospective home owner can purchase a home costing not more than two and one-half times his annual income," says the September issue of the *Federal Home Loan Bank Review*, "the family with an income of \$2,500 a year could afford a home similar in design to the standard house which is used as a basis for the building cost index." The costs of building this house have shown an interesting trend during the last few years.

In general, building costs rose from January, 1936, to September, 1937. The total cost of labor and materials in



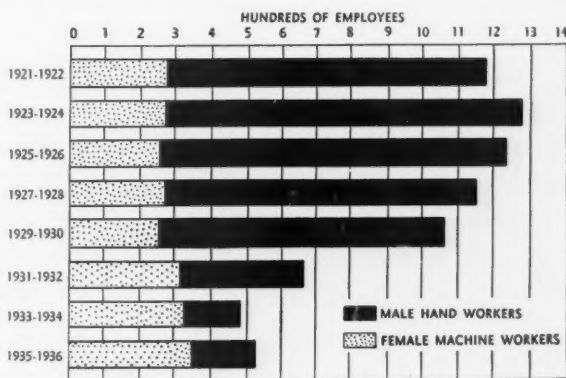
AVERAGE COST OF CONSTRUCTING A STANDARD SIX-ROOM FRAME HOUSE—Reporting periods 1936-1938—Federal Home Loan Bank Board—Changes in home building costs have been largely due to material prices rather than labor costs, as a comparison of the curves indicates.

January, 1936, was \$4,791, and the peak in August, 1937, was \$5,404. Material costs contributed heavily to the rise, being responsible for nearly twice as much of the dollar increase as labor, although labor costs rose 14.2 per cent and material costs 12.1 per cent in the period.

Since August, 1937, building material costs have been almost the sole factor in the decline of expenditures for the standard house, decreasing \$129, while labor costs dropped only \$8.

## Sad Plight of Cigar Makers

UNLIKE the leather and bituminous coal industries (which have been discussed in previous issues), mechanization of the cigar industry has been accompanied by declines in both production and employment. Competition



AVERAGE DAILY NUMBER OF PERSONS EMPLOYED IN TYPICAL CIGAR FACTORY—1921-1936, biennially—Works Progress Administration—The proportion of machine workers replacing hand workers has increased, while the total number of employees has been greatly reduced.

by manufacturers of much cheaper cigarettes led cigar producers to the necessity of reducing costs and hence prices. The installation of machines made the large-scale production of cheap cigars possible, the WPA survey points out, but demand was not found sufficient to warrant increased production, and employment declined in the industry from 114,000 workers in 1919 to 56,000 in 1935.

In almost every factory, the survey revealed, the entire force of hand cigar makers was dismissed when the machines were put in, and a smaller number of young women were hired to operate the labor-saving mechanisms.

The situation of the displaced hand cigar maker is a none too happy one, for he is as a rule a highly skilled artisan in his trade, too old to make an easy adjustment to some other type of work, and not old enough to receive old-age benefits. Self-employment, as a "buck-eye" operator, rarely yields a living. As his long unemployment may be occasionally interrupted by temporary jobs, unemployment insurance is often of little assistance. The conclusion reached by the study was that this group necessarily constitutes a residual relief problem, dependent for any kind of a solution on either public or private charity.

## HERE AND THERE IN BUSINESS

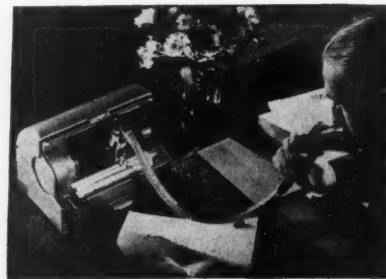
WHAT'S NEW AS OBSERVED BY THE AGENCY'S REPORTERS

**THOUGH** there are doubtless many persons who believe that the William J. Burns International Detective Agency engages only in exploits which follow in the Sherlock Holmes tradition, actually it has conducted a good many commercial investigations as well. And in doing them it has found more times than not that they spill over into a phase of market research. For example, scarcely news, Brand A may linger on a dealer's shelves because a salesperson is on the payroll of the manufacturer of Brand B.

To carry on this growing body of fact-finding which lies somewhere between confidential investigation and market research, the Burns Agency has set up a division known as Consumer

and Trade Relations Service. In charge are Randal Borough, formerly a vice-president of the Lord, Thomas & Logan Advertising Agency, and A. S. Bennett, sales and research counselor. Headed up in New York, the division has on tap the full-time, trained investigators of the Burns' staffs in 29 cities, and is preparing to conduct investigations on a national scale.

**Prisms**—In the forty years that the Holophane Company, New York City, has been manufacturing lighting equipment it has become increasingly difficult to explain to prospective customers what it is that Holophane has to sell. In recent years especially, since the company has been placing more



*IT WINKS*—Exhibited at the recent National Business Show, the desk-corner Ediphone winks a "Safety Signal Light" if you dictate with the recorder in the wrong position.

and more stress on the control of light by prismatic action, salesmen and customers many times have found themselves tangling hopelessly with misty words about principles of physics.

At bottom the Holophane globes depend for their light directing power on two movements of light, reflection and refraction. Refraction is the bending of light achieved by passing it through a wedge-shaped piece of transparent material. Glass will do very nicely. Armed with these two principles and with a patient production force in the Newark, N. J., plant, Holophane engineers can design and produce glass globes which will concentrate, diffuse, or angle light from an everyday bulb in almost any way that you wish. All a question of how the prisms and planes are grooved into the surface of the globes.

For traffic intersections there is one lamp which will send rays in the form



*DEMONSTRATOR*—Here in this hall, part of its Light and Vision Institute, the glass-making Holophane Company shows some of the tricks which can be played with prisms.



of a cross down four streets, leaving the houses at the corner undisturbed. For stock rooms there is another unit which will send the rays slanting into every shelf. For airports there is a field marker which sends out a single beam of light (all 360 degrees around) tilting upward at the gliding angle of seven-and-a-half degrees.

To make skeptical prospects believe that such tricks can be done and to show them their commercial effectiveness and economy, Holophane has now given up the oral and blueprint battle; instead it leads them to its Light and Vision Institute, where a succession of laboratory demonstrations tells stories one's eye can immediately understand. To that hall, no matter how many years of college physics they have had, go architects, surgeons, manufacturers, and merchants, each with his own little scheme taking form in his head.

**Paper Work**—A broker-friend who recently cleaned up a lot of old bills has sent our Signs of the Times Department an item from his morning mail. From Berg-Holzman, Inc., men's clothing store in the New York financial district, it is one of their regular ruled, monthly statements. Diagonally across the form, where the broker had been accustomed to seeing dates, articles, and charges, runs this brief note: "Sorry you do not owe us anything. B-H, Inc."

**Business Show**—Well-attended at the recent six-day National Business Show, New York City, was the exhibit of the Royal Typewriter Company. Especially crowded each evening was the hour between nine and ten; it was at nine-thirty that Royal held the drawing of its daily lottery—tickets free; prize, a Magic Margin portable. On neither of two nights did the reporter for DUN'S REVIEW come away any richer. Neither, for that matter, did an enterprising attendant who had been studying the laws of probability, though he stuffed in 26 self-addressed tickets the first night, 91 the second.

About the new adding and calculating machines by Marchant, Monroe, Friden, and Allen Wales our representative (Halsey is not overly bright mechanics-wise) brought back next to no news at all. The agreeable young

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### and Federal Taxes on ESTATES, TRUSTS, and GIFTS

estate tax; gift tax; income tax as this affects estates and trusts

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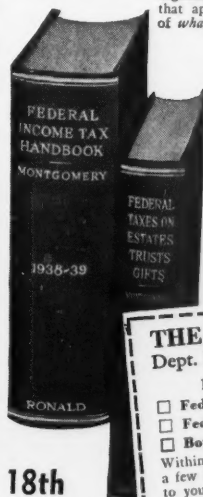
**T**AX problems you face this year offer unprecedented complications. In the Revenue Act of 1938, you have dozens of new provisions to which you must adjust your tax work.

Under this new law, it is more important than ever for taxpayers and their counsel to consider options which they are permitted; and to exercise the option in any particular transaction or accounting method which results in the *minimum* tax. More and more, your important opportunities to make tax savings lie in your handling of unsettled or doubtful points; in your use of judgment where there are alternative courses.

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### REACHING CHIEF EXECUTIVES OF LARGE CORPORATIONS

Dun's Review provides direct approach to the chief executives of large corporations.

With a circulation of 50,000, more than 30,000 are officers of their companies; of these 20,283 are presidents.

57.2% of the companies are manufacturers; 26.4% are wholesalers; 9.3% are banks, financial, insurance companies.

42.3% of the circulation is in companies rated over \$125,000, offering exceptional coverage of the active concerns with substantial purchasing power.

men who were on hand at these exhibits had learned their demonstration talks equally well, and explaining about their charges, they managed uniformly to attain a pace of delivery which mystified both him and other nearby seekers-after-light, though all of them hypocritically wagged their heads in assent.

Two items which were within Halsey's comprehension were a chair and a stamp pad. The first, a product of the DoMore Chair Company, Elkhart, Ind., is a luxurious, sturdy, individually-adjusted desk chair which is said to encourage erectness for desk work, relaxation for dictation, and "intermittent mild exercise." The stamp pad (Clear Point Process Company, New York City) uses no cloth, no felt; instead, consists of a block of chemically processed wood, with the end of the grain exposed on the flat side. Quick-drying ink is held in the pores of the wood. Capillary attraction keeps just the right amount of ink at the surface.

**Booster**—No one seems to have thought of it, or patented it, before, even though it's a very simple device. It consists of eight or nine feet of thin rubber hose, with tire-valve fittings at each end. Mostly it will just lie inactive in the glove-compartment of your car, but when you have a flat from a slow leak it will serve to transfer half of the air from another tire to the ailing one. The Cleveland Machine Company calls it the Clemaco Tire Booster.

**Shoes**—"Two on Lumberjack in the fourth at Hialeah" is just a whim for one person, but for another it may be the end product of intensive research. The second wager is backed by table-drumming meditation on such matters as temperature, mud, times, competition, jockeys, scratches—all the traditional variables of the Sport of Kings. More recently a new variable has come to clutter up the simultaneous equations of horsemanship: "Does he buy his shoes in Pittsburgh?"

For, a few years ago a Maryland sportsman observed that 90 per cent of the wear of a racing shoe was in the toe. Forthwith he developed an aluminum shoe equipped with a tool steel toe calk, aluminum for lightness, steel for durability. Weighing only two ounces, the new plates were quickly

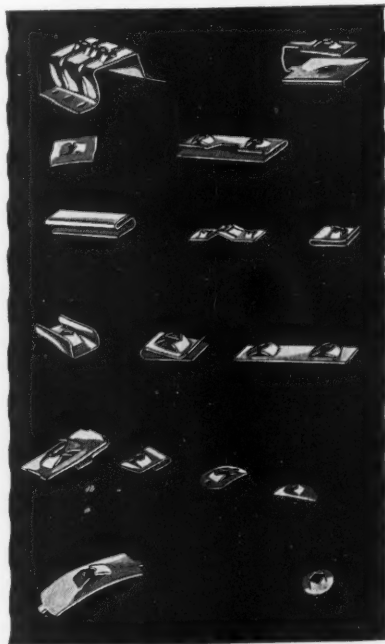
adopted by horsemen all over the country, so that today three bets out of four will go down on aluminum-shod hopefuls, but if the sky is cloudy and the track slow you had better make sure.

Thoroughbreds who wear them have established 300 records on the American turf in five years. Five were world's records.

**Speed Nuts**—A new, and some say revolutionary, development in manufacturing is to be found on assembly lines here and there. It is the adoption of patented spring tension "Speed Nuts" in place of threaded nuts and lock washers. Speed nuts, shown in the picture below, are made of heat-treated spring steel. Manufactured in more than 260 different shapes and sizes to fit most standard sizes of bolts, screws, metal rivets, and plastic studs—they replace both threaded nuts and lock washers, sometimes cutting the number of parts in half and reducing the weight from 60 to 75 per cent.

Another advantage claimed for Speed Nuts is quick and easy adaptability in blind bolting. They may be used in locations which are inaccessible to wrench, pliers, or screwdriver. The nature of the construction of spring tension fastenings helps to keep them

**NEWCOMERS**—More and more during the past year assembly lines in many industries have come to see these Speed Nuts take the place of threaded nuts and lock washers.





FOR EMERGENCIES—To be used in hotels, restaurants, stores, and offices, the Vogel-Peterson knock-down coat rack consists of uprights alone or uprights and crossbar.

from working loose. The harder the stress or strain, the firmer the Speed Nut grips by digging its teeth deeper between the threads of the bolt; loosening of assembled parts from vibration is eliminated.

Comparatively unknown a year or so ago, Speed Nuts are now being used in the assembly of many leading mass production products in over twenty industries, from automobiles to tea kettles and plastic vanity cases. Manufacturer is the Tinnerman Stove and Range Company, Cleveland, Ohio.

**Disney**—Onward and upward with Mickey Mouse and Snow White (DUN'S REVIEW, April, 1938) Walt Disney character merchandise continues to find new sponsors and new, international markets. So it seems, at any rate, to leaf through the 1938-1939 catalogue published by Kay Kamen, Ltd., licensing agent for the Disney Enterprises.

Licensees now number 144 companies in this country, 27 in Canada, and enough in foreign countries to make feasible offices in Paris, Copenhagen, Stockholm, Milan, London, Sydney, and Auckland. New merchandise includes a wind-up toy in the image of a bull, Ferdinand, who has already achieved fame in the shortest book of 1937 and the longest song of 1938. He is the hero of a forthcoming Disney short.

**Bridge**—Managers of restaurants, hotels, stores, and offices know well that there are days—in Winter especially—when there just are not enough

coat racks to go around. For emergencies such as these the Vogel-Peterson Company, Inc., Chicago, has thought up an ingenious device. Its three parts separately are two upright coat racks and a five-foot be-hooked crossbar. When the rush exceeds the capacity of the two uprights, the much-visited manager simply hauls out the crossbar, places it in sockets at the top of the uprights, and hangs up some more coats. Total capacity is 44.

**Pigeon**—It is a fair bet that when the cities of New York and San Francisco open their rival exhibitions in 1939 the latter will have the better Chinese display. For one thing it has more than \$1,000,000 to spend on a quaint little replica of an ancient walled city, to be called "Good Earth Village." It has also the services of Miss Ho Chang Gee, financial genius of San Francisco's Chinatown. And writing, or at least signing, its publicity it has Chingwah Lee, Chinese lead of the film "The Good Earth."

Bankers will especially want to see the section of the exhibit devoted to early currency. Displays will tell the story of the Chinese evolution of paper money, gold banknotes, checks, and bonds. First paper currency, which was called *fei chin*—literally "flying money," circulated in 807 A.D. Earliest examples of counterfeits date back to 1068. Mr. Lee says also that the Chinese financial exhibit will show how early speculators took advantage of regional fluctuations in the price of metals. They sent each other market reports by carrier pigeon.

## ANSWERS TO THE QUIZ

THESE are the answers for the quiz on pages 19-21. Each one right counts 5 points. For a score of 100 readers will be rewarded with a suitably engraved Certificate of Distinction.

- |      |       |       |       |
|------|-------|-------|-------|
| 1. B | 6. C  | 11. B | 16. B |
| 2. C | 7. A  | 12. D | 17. D |
| 3. D | 8. C  | 13. C | 18. B |
| 4. C | 9. A  | 14. B | 19. D |
| 5. C | 10. A | 15. C | 20. D |



Picture 305,000 buyers from 72 countries—and 9,500 exhibitors from 34 countries—doing more than \$250,000,000 of business—in approximately one week's time! That happened in March, 1938—in Leipzig, Germany.

The 1939 Spring Fairs will probably exceed these figures. And that fact concerns your business—whether you want to buy, sell or merely learn. Your line of business is represented at these Fairs—your company should be represented.

In the General Merchandise Fairs—March 5th to 10th—some 6,500 firms will show, in both finished and semi-finished goods, every line for the department store, specialized store, gift shop and decorator. These are the world's greatest merchandise Fairs.

In the Great Engineering and Building Fairs—March 5th to 13th—some 3,300 firms will exhibit machinery, tools, equipment and new materials—for every line of industry. There will be more than 5,000 machines in actual operation. Here is the world's foremost Engineering Show.

Get the full facts. Please write on your business or professional letterhead for Booklet No. 17 covering the Merchandise Fairs—or for Booklet No. 18 covering the Technical Fairs.

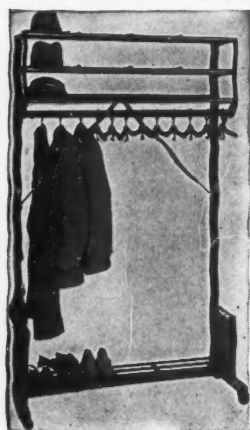
The semi-annual, international Leipzig Trade Fairs are recognized as the world's Show Window. Our New York Office—or an Honorary Representative near you—will be glad to help you determine how these Fairs can give you new markets, new profits, new economies. Write today for these books.

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Rigid square tubular steel, beautifully finished in walnut, olive green or mahogany. Fits anywhere — any length by the foot. 4-ft. unit complete with 12 wooden hangers.

**FOR THE HOME** — increases capacity of closets, wheels out — permits cleaning and sunning without handling of garments.

**FOR CHURCHES, Hotels, Schools, Clubs,** the Special "5-50" portable rack accommodates 50 people in 5 ft. Set up anywhere in a few minutes. Stores in less than 2 sq. ft. All steel, choice of 16 colors, complete with hangers and checks.

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Available Jan. 1, 1939 for executive position of marketing, merchandising nature. Particularly interested and experienced in working out marketing, sales promotion problems of national consumer type products. Inquiries accepted as confidential and without obligation. Address: Box 1000, this publication.

# THE BUSINESS BOOKSHELF

BUSINESS . . . FINANCE . . . ECONOMICS . . . GOVERNMENT

**I**F ADVERTISING is medicine — and I have heard it so characterized by its practitioners — then *Advertising and Selling Through Business Publications*, by Mabel Potter Hanford (Harpers, \$2.50) is a manual for the patient and a textbook for the doctor. Here is guidance for the advertiser, the advertising agent, and the publisher.

Here, too, is an achievement in exploration. In her preface, Mrs. Hanford calls her work "a pioneer book in its field," which it is. And of her qualifications to undertake such a task, Roy S. Durstine writes in the foreword:

"Mabel Potter Hanford carved out a niche for herself when she asked to be allowed to specialize in this field. As one who once had her as his exemplary private secretary and who has watched her conscientious and resourceful mind at work for more years than it is polite to mention about a lady, I can commend the results of her studies to all those who are patient enough to want to get under the surface of an exceedingly important and often baffling phase of advertising."

Mr. Durstine is president of the advertising firm of Batten, Barton, Durstine & Osborn, in which Mrs. Hanford is a specializing space-buyer.

### Definitions

Logically, Mrs. Hanford's book concerns itself with definitions and descriptions of the instruments and expedients with which and through which business-paper advertisers advertise. It defines vertical publications, industrial publications, horizontal publications, trade papers, service and professional periodicals, catalogues, and data-books. It defines and from the standpoint of the advertiser contrasts the various kinds of business-paper circulation. The book concerns itself with "copy" — the elements of illustration and text-matter that go into advertising. It concerns itself with markets and with media. It sets forth the technique of analyzing publishers' statements. It presents charts that reflect readers' reading habits. It reproduces award-winning business-paper advertisements.

Realistically, this book concerns itself with fallacies. In advertising thought, fallacy has not given way everywhere to truth; for to tell the truth all that is true about advertising hasn't yet been revealed. But the author stands on solid ground when she demolishes five of the fallacies that have deluded many advertisers into believing that with consumer advertising alone they could "do a job."

### Controversies

Realistically, too, the book concerns itself with controversies, among them the controversy over that 15 per cent. Curiously, or characteristically, a business outwardly dedicated to rationalization and inwardly dedicated to clear thinking has yet to standardize its own procedure on agency commissions.

Yet despite this fundamental handicap, troublesome alike to publisher and advertising agent, business-paper publishing, supported by business-paper advertising, has grown to the stature of a great industry; and its product, permeating American business through and through, profoundly affects business men's thoughts and their works.

And to this reviewer, as to others who have watched the development, the brightest, most hopeful highlight in Mrs. Hanford's book shines forth from these two contrasting paragraphs:

"We cannot escape the fact that there still exist in the business-paper field a number of publications which continue only because of careless buying on the part of advertisers and space-buyers."

But—"Space-buying of the future will spend considerably more energy in finding the answers to questions that deal entirely with editorial set-up. For shadows of this activity already have gone before us; and the editorial integrity and standing of business papers and their publishers is definitely a topic of discussion today at business conferences, advertising associations and publishers' meetings."

And thus the editor, long hidden behind the cash register, reappears.

*Reviewed by Arthur Little, Associate Editor, Printers Ink Publications.*

## OVER THE EDITOR'S DESK

(Continued from page 3)

about industrial research as he saw it from his excellent vantage point, he has changed his mind, contributing "Discoveries and Dividends," which will appear in the December number.

THROUGH five agencies, including the Bureau of Home Economics and the Bureau of Labor Statistics, the Federal Government has been conducting a Consumer Purchase Survey, interviewing urban and rural families about the goods they bought during a twelve-month period in 1935-1936. Next month Wroe Alderson, of the Division of Commercial Research of the Curtis Publishing Company, will point out the sort of marketing knowledge which can be derived from this material. For the purpose of demonstration he will analyze the data already available for eight large cities—New York, Chicago, Atlanta, Columbus, Denver, Omaha, Providence, and Portland, Ore.

NEXT month, too, Thomas R. Jones, president of American Type Founders, Inc., known to many as an executive with considerable experience in dealing with management problems, will contribute an article discussing some of the principles involved.

And, too, in the December number Roy A. Foulke, Manager of the Analytical Report Department of DUN & BRADSTREET, INC., will present an analysis of the fourteen important operating ratios for each of sixty lines of business based on 1937 operations.

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# "NO!"

## Said The Banker

Your firm may be *refused* a loan for the very reasons which make you *need* it: too much capital tied up in receivables -- too many overdue and doubtful accounts -- profits and reserves depleted by a succession of unexpected credit losses.

Able executives of Manufacturing and Jobbing houses prevent such a state of affairs. They cover all their accounts with

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Of special interest, today. It is a fact that "American" policies cover "77-B" reorganizations on the same basis as insolvencies. Any "American" representative will gladly help you determine the kind of policy that meets your specific requirements.

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## *The Importance of Being Discontented. . . . .*



A GROUP of business men were discussing the general problem of when an executive should be replaced. Tests by age, physical vitality, length of service were all suggested, but the prize should go to the man who said, "When he knows all the reasons why no further improvement can be made." Then, of course, comes the end of progress.

The world is moving so rapidly that to stand still is to fall behind. A successful executive in one of our largest corporations has adopted the principle, "If we have done anything the same way for ten years, there is probably a better way to do it." No one in his organization is ever allowed to be satisfied with past records,—the test is against up-to-date standards.

Contentment is defined as "rest and quietness of mind." Under such a definition, the successful business man must be continually discontented.

*Willard L. Thorp.*

E D I T O R



